FAO Fisheries Circular No. 898 FID/C898

ISSN 0429-9329

STRUCTURE AND PROCESS OF THE 1993-1995 UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

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STRUCTURE AND PROCESS OF THE 1993-1995 UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

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ROME, December 1995

PREPARATION OF THIS DOCUMENT

This document was prepared to provide information concerning the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The Conference extended from April 1993 until August 1995. The paper summarizes the process of the Conference which led to the adoption of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, at United Nations headquarters in New York, on 4 August 1995.

Doulman, D.J.
Structure and Process of the 1993-1995 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks
FAO Fisheries Circular. No.898. Rome, FAO. 1995. 81p.

ABSTRACT

This paper reviews the structure and process of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, convened in New York at United Nations headquarters in April 1993 and concluded in December 1995, in accordance with United Nations General Assembly resolution 47/192. The purpose of the Conference was to secure international agreement, consistent with the 1982 United Nations Convention on the Law of the Sea, for the enhanced conservation and management of straddling fish stocks and highly migratory fish stocks. The paper does not attempt a comprehensive analysis of the many complex issues considered by the Conference nor an assessment of the debate. Rather, the paper provides factual information on the proceedings and the outcome of the Conference. By consensus at its sixth session in August 1995, the Conference adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Final Act of the Conference and the Agreement opened for signature on 4 December 1995. On this date 45 States signed the Final Act and 25 States signed the Agreement. It will be open for signature for one year from 4 December 1995. The Agreement will take effect 30 days after the receipt of the thirtieth instrument of ratification or accession.

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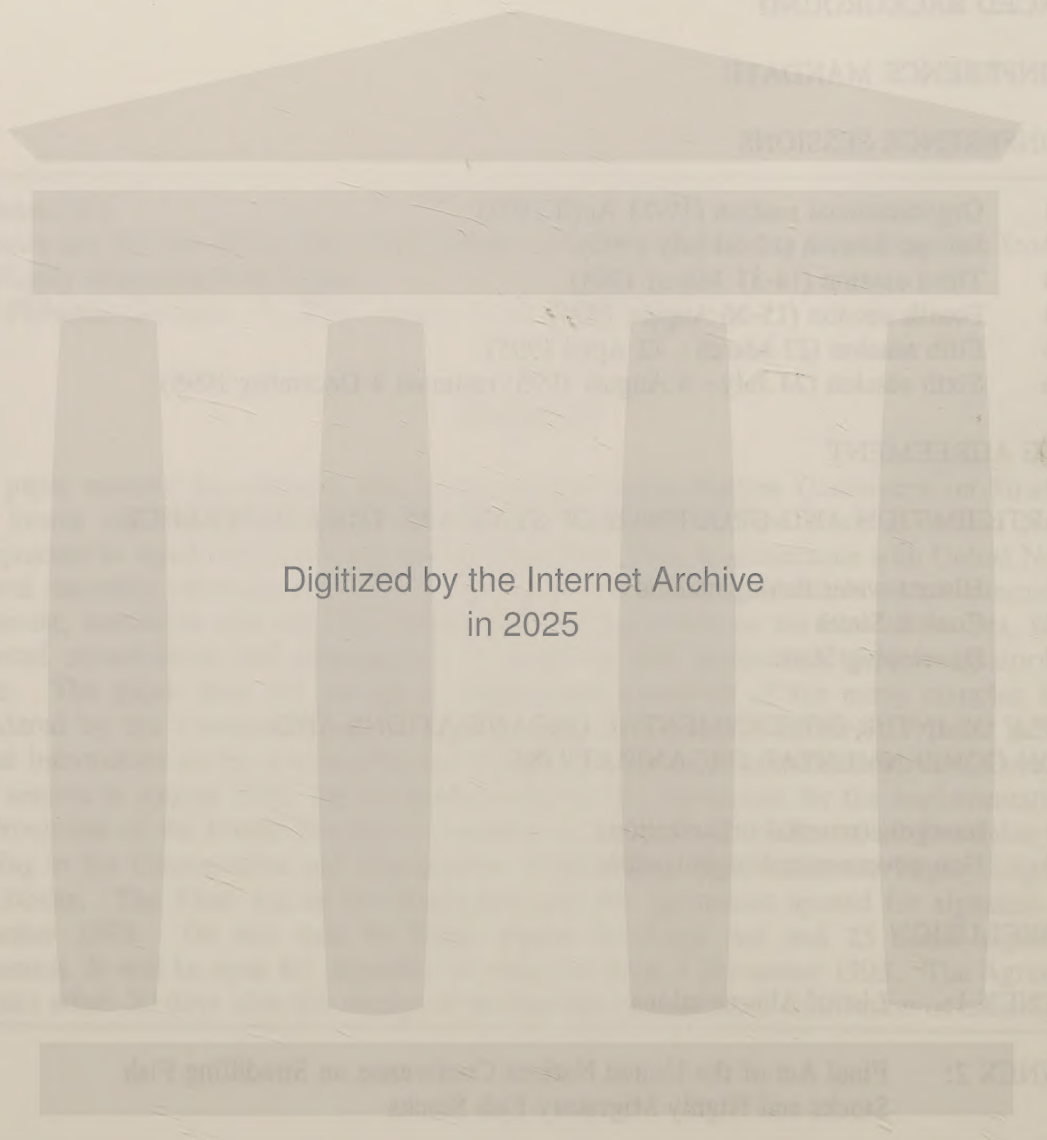

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1. INTRODUCTION

The need to foster rational conservation and management of marine living resources of the high seas has become a matter of considerable international concern. This concern principally stems from the high degree of uncertainty surrounding the exploitation of these resources and the fact that many of them are considered by the Food and Agriculture Organization of the United Nations (FAO)[1] to be fully-exploited if not depleted.[2] This situation has arisen because non-sustainable fishing practices have been used and, in some instances, non-parties to internationally agreed fisheries conservation and management arrangements have operated in management areas and undermined the effectiveness of those arrangements. This has led to resource use conflicts, and the possibility of some States resorting to unilateral measures to try to protect fish stocks that are harvested both within exclusive economic zones (EEZs) and on the high seas.

The 1982 United Nations Convention on the Law of the Sea (1982 Convention) prescribes the rights and obligations of States relating to the exploitation of high seas marine living resources.[3] However, these prescriptions are framed only in general terms. It was thus agreed at the United Nations Conference on Environment and Development (UNCED)[4] that measures were required to more effectively promote the implementation of the 1982 Convention and to ensure that high seas marine living resources were exploited in a rational manner and that fishermen and their respective flag States, operating on the high seas, acted in a responsible and accountable manner.

The 1982 Convention defines EEZ and high seas. Article 55 of this Convention states that the EEZ is "...an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the Coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention."[5] High seas, on the other hand, are defined in Article 86 of the 1982 Convention as being "...the seas that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. ..."[6] It was against the background of these two definitions that discussion and negotiation at the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks centred with respect to the elaboration of more effective conservation and management arrangements for these two types of fish stocks.

2. UNCED BACKGROUND

The non-sustainable use of the world's natural resources and environmental degradation prompted the United Nations General Assembly (UNGA) on 22 December 1989 to adopt resolution 44/228. This resolution called for a global meeting to devise integrated strategies that would halt and reverse the negative

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[1] Annex 1 contains a list of acronyms used in this paper.

[2] For a discussion of the status of fisheries resources see, FAO. 1994. 'Review of the state of world marine fishery resources'. *FAO Fisheries Technical Paper 335*. FAO. Rome. 136p., and FAO. 1995. *The State of World Fisheries and Aquaculture*. Rome. 57p.

[3] In accordance with article 116 of the 1982 Convention, the right to fish on the high seas is a qualified right. This point was never contested during the 1993-95 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

[4] See paragraph 17.49 (e). United Nations. 1992. *Agenda 21: Programme of Action for Sustainable Development*. United Nations (Department of Public Information). New York. p.155.

[5] United Nations. 1983. *United Nations Convention on the Law of the Sea*. UN. New York. 224p.

[6] United Nations. 1983. *United Nations Convention on the Law of the Sea*. UN. New York. 224p.

impact of human behaviour on the physical environment and promote environmentally long-term sustainable economic development in all countries.

UNCED, the meeting called for in UNGA resolution 44/228, was held in Rio de Janeiro, Brazil, from 3 to 14 June 1992. The Conference, attended by more than 178 heads of government, deputy heads of government, or ranking government ministers committed their respective governments to the 27 principles contained in the Declaration of Rio on Environment and Development (Rio Declaration) and the carefully negotiated text of *Agenda 21: Programme of Action for Sustainable Development* (Agenda 21).[7] The Rio Declaration was endorsed by the UNGA in resolution 47/190 of 22 December 1992.[8]

The Rio Declaration and Agenda 21 were negotiated largely in a preparatory commission, consisting of four sessions between 1990 and 1992, at United Nations headquarters in New York. Most of the text was agreed at the officials level in the preparatory commission, though a number of important issues, and in particular those matters relating to the funding for the implementation of Agenda 21, were addressed, if not resolved, at a political level at the Rio Summit. Although the Rio Declaration and Agenda 21 do not have legally binding effect, both texts, nonetheless, carry a strong moral obligation for States to ensure that they are fully and effectively implemented.

As a means of demonstrating the international resolve to ensure that positive and effective steps were taken to implement the principles contained in the Rio Declaration and the programme of action in Agenda 21, UNCED requested the UNGA to establish a United Nations Commission for Sustainable Development (CSD). The CSD was established at United Nations headquarters in 1992. The Commission consists of representatives of member States of the United Nations and serves as the principle 'watch dog' to monitor progress on the implementation of the Rio Declaration and Agenda 21.

The CSD met for the first time in June 1993. In subsequent years, the CSD will consider chapters of Agenda 21 on a four-year rotating basis. In its resolution 47/190 the UNGA, upon the recommendation of the CSD, decided to convene, not later than 1997, a special session for the purpose of an overall review of the implementation of Agenda 21.

Agenda 21 is a comprehensive action plan with a preamble, four sections and a total of 40 chapters. It also includes a Statement on Forest Principles. The four sections of Agenda 21 address:

(i) social and economic dimensions;

(ii) conservation and management of resources for development;

(iii) strengthening the role of major groups, and

(iv) the means of implementation.

Chapter 17 of Agenda 21 deals with "Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources". There are seven programme areas in this chapter. These are:

(A) integrated management and sustainable development of coastal and marine areas, including exclusive economic zones;

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[7] United Nations. 1992. *Agenda 21: Programme of Action for Sustainable Development*. UN Department of Public Information. New York. 294p.

[8] United Nations General Assembly. 1992. Resolution 47/190 "Report of the United Nations Conference on Environment and Development". United Nations. New York. 1p.

(B) marine environmental protection;

(C) sustainable use and conservation of marine living resources of the high seas;

(D) sustainable use and conservation of marine living resources under national jurisdiction;

(E) addressing critical uncertainties for the management of the marine environment and climate change;

(F) strengthening international, including regional, cooperation and coordination, and

(G) sustainable development of small islands.

Each programme of Chapter 17 is set out in terms of the basis for action, objectives, activities (management-related activities, data and information, and international and regional cooperation and coordination), and the means of implementation (financing and cost evaluation, scientific and technological means, human resource development and capacity building).

Under Programme Area C of Chapter 17 of Agenda 21, States should take effective action to ensure that high seas fisheries are managed in accordance with the 1982 Convention. In part, States are required to:

"(d) Define and identify appropriate management units;

17.50 States should convene, as soon as possible, an intergovernmental conference under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The conference, drawing, *inter alia*, on scientific and technical studies by FAO, should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means of improving cooperation on fisheries among States, and formulate appropriate recommendations. The work and the results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas. ..."

In terms of the conservation and management activities necessary to achieve this objective, Programme Area C of Agenda 21, recommends that States should cooperate bilaterally and multilaterally, as appropriate, at the subregional, regional and global levels to ensure that high seas fisheries are managed in accordance with the provisions of the 1982 Convention. In particular States should:

(i) give full effect to the provisions of the 1982 Convention with respect to straddling stocks and highly migratory species;

(ii) negotiate, as appropriate, international agreements for the effective conservation and management of fish stocks;

(iii) define and identify appropriate management units, and

(iv) convene a UN intergovernmental conference focusing on straddling fish stocks and highly migratory fish stocks.

In Programme Area C, States are further called upon to:

(i) ensure that incidental catches on the high seas are minimized;

(ii) enact effective monitoring, control and surveillance (MCS) measures to ensure compliance with applicable conservation and management measures, including full, detailed, accurate and timely reporting of catch and effort data;

(iii) deter reflagging of fishing vessels to avoid compliance with applicable conservation and management measures for high seas fishing activities;

(iv) prohibit destructive fishing practices;

(v) fully implement United Nations General Assembly (UNGA) resolution 46/215 on large-scale pelagic driftnet fishing,[9] and

(vi) take measures to increase the availability of marine living resources as human food.

Because of the size and complexity of the ocean issues, an Administrative Committee on Coordination/Sub-Committee on Oceans and Coastal Areas (ACC/SC) has been established in 1994 by the Inter-Agency Committee on Sustainable Development (IACSD) as Task Manager, *inter alia*, to mmonitor and review the implementation of Chapter 17. The ACC/SC is chaired by FAO until 1996. IOC/UNESCO provides the secretariat for the ACC/SC.

Depending on their respective mandates, the different United Nations agencies of the ACC/SC have been assigned responsibility as sub-task managers to oversee and report to the CSD on progress with the implementation of Chapter 17 of Agenda 21. With respect to fisheries, FAO and the United Nations have been assigned joint responsibility for overseeing the implementation of Programme Area C (marine living resources of the high seas) while FAO, in its own right, has responsibility for Programme Area D (marine living resources under national jurisdiction). Other United Nations agencies, as appropriate, will also work closely with FAO and the United Nations in executing these assigned tasks.

3. CONFERENCE MANDATE

The Forty-seventh Session of the UNGA in 1992 addressed the issue of a UN-sponsored intergovernmental conference on straddling fish stocks and highly migratory fish stocks, as called for in Agenda 21. The UNGA decided, *inter alia*:

> "... to convene in 1993, under United Nations auspices and in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development, an Intergovernmental Conference on straddling fish stocks and highly migratory fish stocks, which should complete its work before the Forty-ninth Session of the General Assembly; ..."[10]

UNGA resolution 47/192 provided the terms of reference for the Intergovernmental Conference and defined the scope and nature of its work. The Conference was given the primary tasks of:

(i) identifying and assessing existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks;

(ii) considering means of improving fisheries cooperation among States, and

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[9] On a global basis, the incidence of fishing with large-scale pelagic driftnets has virtually disappeared, except in the Mediterranean Sea and in pockets of the Northeast Atlantic Ocean.

[10] United Nations General Assembly. 1993. *Resolution 47/192 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations. New York. 3p.

(iii) formulating appropriate recommendations.

The Forty-eighth Session of the UNGA, noting progress made in the first two sessions of the Conference in 1993, agreed to extend the mandate of the Conference for a further year without any alteration to its terms of reference.[11] However, this agreement was not without considerable debate in the UNGA. The debate centred principally on an attempt by States with distant-water fishing interests to remove the reference to 'high seas' in UNGA resolution 47/192. Such a change to the resolution was opposed vigorously by coastal States who maintained that the deletion of 'high seas' would be inconsistent with the spirit and intent of the Rio Declaration and Chapter 17 of Agenda 21. However, more importantly, coastal States viewed this move by distant-water fishing nations (DWFNs) to undermine the national sovereignty and integrity of coastal States within their respective EEZs. Such an erosion of national sovereignty, as enshrined in Part V (Articles 55 to 75) of the 1982 Convention, was not acceptable to these States on any terms.

A further extension of the Conference was granted by the UNGA on the basis of its resolution 49/121.[12] In this resolution, *inter alia*, two further sessions of the Conference in 1995 were agreed, the Conference was urged to complete its work before the Fiftieth Session of the UNGA, and the Secretary General of the United Nations was requested to provide a final report on the work of the Conference to the UNGA at its Fiftieth Session.

4. CONFERENCE SESSIONS

The Conference had a total of six sessions, one of which was organizational and the remaining five substantive.[13]

In February 1993, prior to the organizational session of the Conference, Canada took the initiative to organize in St. Johns Newfoundland, a meeting of coastal States to consider issues relevant to the Conference. The purpose of the meeting was essentially to foster solidarity among coastal States and to raise the level of consciousness on issues germane to UNGA resolution 47/192.

In this pre-Conference meeting, coastal States were encouraged to review a range of issues of common concern relating to straddling fish stocks and highly migratory fish stocks, to exchange information and ideas concerning likely negotiating positions and scenarios in the Conference, together with possible Conference outcomes. Canada prepared documents for the meeting and also made available a range of other papers for participating States.

4.1 Organizational session (19-23 April 1993)

In line with UNGA resolution 47/192, the Division for Ocean Affairs and Law of the Sea (DOALOS) of the UN Office of Legal Affairs, was assigned the responsibility of providing the Secretariat to the Conference. In turn, DOALOS set in train arrangements for an organizational session in April 1993.[14]

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[11] United Nations General Assembly. 1994. *Resolution 48/194 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations. New York. 2p.

[12] United Nations General Assembly. 1995. *Resolution 49/121 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations. New York. 2p.

[13] Some of the issues addressed in this paper for the first four sessions of the Conference were published previously in Doulman, David J. 1995. "Perspectives on the Management of High Seas Fisheries: The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks: A View from Rome". *Reviews in Fish Biology and Fisheries*. Vol. 5. pp.103-119.

[14] All sessions of the Conference were held at United Nations Headquarters in New York.

At this session Ambassador Satya Nandan of Fiji was elected Chairman of the Conference.[15] Widely acclaimed internationally as a jurist and Law of the Sea Expert, Ambassador Nandan had previously been closely involved in the negotiation of the 1982 Convention, *inter alia*, acting as rapporteur of the Second Committee of the 1973-82 United Nations Conference on the Law of the Sea (UNCLOS) and chairing its Negotiating Group on item 4. He subsequently served as Special Representative of the Secretary-General for the Law of the Sea from 16 January 1984 to 29 February 1992.

The Conference also elected, by acclamation, three vice-chairmen from Mauritania (African States), Italy (Western European and other States) and Chile (Latin American and Caribbean States). It was agreed that consideration of the appointment of a fourth vice-chairman should be deferred until the second session.[16]

Rules of procedure were adopted,[17] and the organization of work for the second session of the Conference was agreed. In addition, a credentials committee consisting of Antigua and Barbuda, Argentina, Burundi, China, Kenya, New Zealand, Papua New Guinea, Russian Federation, and USA, was appointed. The rules of procedure required that the credentials committee meet at each session of the Conference and duly report to the Conference prior to the conclusion of each session. At each session, under the chairmanship of Argentina, the credentials committee met and reported, as required by the rules of procedure.

Attendance at the organizational session was strong, and in addition to UN Member States and IGOs, a large number of NGOs were represented.[18] A significant part of the session was taken up with debate relating to the role of the European Economic Community (EEC) in the Conference. However, it was finally agreed that:

> "The representative of the European Economic Community shall participate in the Conference in matters within its competence without the right to vote. Such representation shall in no case entail an increase of the representation to which the member States of the European Economic Community would otherwise be entitled."[19]

With respect to the organization of work of the Conference, it was agreed in the first session, on the basis of recommendations from the Chairman, that all substantive issues would be considered in plenary, though it was recognized that *ad hoc* working or negotiating groups would need to be established to consider specific issues.[20]At this session, the Chairman sought assistance from participants in elaborating the substantive issues to be considered by the Conference. In particular, the Chairman requested participants to provide him with a listing of issues that should be addressed. In the inter-sessional period prior to the second session a large number of submissions were received by the Chairman. These submissions were distributed by the Secretariat for the information of the Conference participants.

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[15] There was strong lobbying prior to the Conference for the position of Chairman. However, the matter was resolved in advance of the organizational session and Ambassador Nandan, ultimately, was the only candidate.

[16] Subsequently, Poland was elected as the fourth vice-chairman.

[17] Conference document A/CONF.164/6 "Rules of Procedure".

[18] NGO representation was called for in paragraphs 4 and 12 of UNGA resolution 47/192.

[19] See Rule 2 of Rules of Procedure, Conference document A/CONF.164/6, p.2. A footnote to Rule 2 referred to the Declaration of the European Economic Community upon signing the United Nations Convention on the Law of the Sea. The title "European Economic Community" was changed formally to "European Community" at the third session of the Conference. In view of this change reference throughout this paper is made to the European Community.

[20] Document A/CONF.164/3 "Organization of Work".

In recognition of FAO's mandate for fisheries matters within the UN system, and in accordance with paragraph 11 of UNGA resolution 47/192, an FAO staff member joined the Conference Secretariat as Scientific and Technical Adviser.[21]

At the organizational session, FAO indicated that it would make available a number of technical documents for the second session, including the report and documents of the 1992 FAO Technical Consultation on High Seas Fishing;[22] the Declaration of Cancún adopted by the 1992 International Conference on Responsible Fishing in Cancún, Mexico; the Strategy for Fisheries Management and Development adopted by the 1984 World Conference for Fisheries Management and Development; the draft Code of Conduct for Responsible Fisheries,[23] and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement), at that time available in draft form.[24]

At the conclusion of the organizational session, FAO was requested by the Group of South Pacific States to provide a paper for the second session of the Conference. The South Pacific States pointed out that FAO had done much valuable work in technical assessments on key fisheries issues and requested that an updated report summarising the characteristics of the main high seas fisheries, covering details of current stock status, characteristics of the fleets operating in the fisheries and recent trends in catch and effort, be provided as a document of the Conference.[25]

4.2 Second session (12-30 July 1993)

In his opening statement at this session, the Chairman reminded the Conference that many of the world's fish stocks were not being harvested in a sustainable manner and that this situation, if allowed to

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[21] In accordance with paragraph 11 of General Assembly resolution 47/192, the author was appointed by FAO as Scientific and Technical Adviser to the Conference. He had previously served as secretary of FAO's 1992 Technical Consultation on High Seas Fishing. He also served as the secretary to FAO's Task Force on High Seas Fishing.

[22] FAO. 1993. "Report of the Technical Consultation on High Seas Fishing". *FAO Fisheries Report No. 484*. FAO. Rome. 85p. plus supplement. This consultation originated from a recommendation contained in the 1990 FAO Expert Consultation on Large-scale Pelagic Driftnet Fishing. See FAO. 1990. "Report of the Expert Consultation on Large-scale Pelagic Driftnet Fishing". *FAO Fisheries Report No. 434*. FAO. Rome.78p.

[23] The Code of Conduct for Responsible Fisheries, to be adopted on a voluntary basis by FAO and non-FAO Members, consists of articles covering general principles, responsible fisheries management, responsible fishing operations, responsible aquaculture development, integration of fisheries into integrated coastal area management, international fish trade and post-harvest practices, and fisheries research. FAO is also preparing guidelines for the implementation of each article so that Members will be able to give effect to the Code. It was adopted by the Twenty-eighth Session of the FAO Conference in November 1995.

[24] The Twenty-seventh session of the FAO Conference in November 1993 approved the Compliance Agreement, under Article XIV of the FAO Constitution. The Compliance Agreement is open for signature by FAO Members and it will come into force on the deposit with the Director-General of FAO of the twenty-fifth instrument of acceptance. The Agreement will be an integral part of the Code of Conduct for Responsible Fisheries. As of October 1995 the Agreement had been signed by Canada, Georgia, Madagascar, Myanmar, Norway, Saint Kitts and Nevis, and Sweden. See FAO. 1995. *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* (in Arabic, Chinese, English, French and Spanish). FAO. Rome. 60p.

[25] This document, entitled "Some High Seas Fisheries Aspects Relating to Straddling Fish Stocks and Highly Migratory Fish Stocks", A/CONF.164/INF/4, was distributed at the second session of the Conference. In addition, FAO also made available a more comprehensive document focusing on resource aspects. This document was subsequently published by FAO in 1994 as "Review of the State of World Marine Fishery Resources". *FAO Fisheries Technical Paper 335*. FAO. Rome. 136p.

continue, could threaten the long-term supply of this important source of food and adversely affect the fishing industry.[26] He also noted that there was a need to secure an internationally agreed solution if the conservation and management of high seas fisheries resources was to be successful. The Chairman underscored the importance of technical work being initiated by FAO with respect to high seas conservation and management but pointed out that such work required reinforcing by the Conference through the clear definition of a legal and political framework.

At the beginning of the second session States, IGOs (including regional fishery bodies) and NGOs were invited to make general statements, but focusing specifically on matters to be addressed by the Conference. These statements permitted participants to outline their national and organizational positions on the conservation and management of straddling fish stocks and highly migratory fish stocks. Depending on their respective interests in high seas fishing and the degree of interaction with high seas fisheries, the positions of States fell clearly into two groups: coastal States and DWFNs.

On 12, 13 and 14 July 1993 general statements were made by Australia, EC, Peru, Chile, China, Russian Federation, Canada, New Zealand, Norway, USA, Korea, Japan, Argentina, Solomon Islands (on behalf of the 16 member States of the South Pacific Forum Fisheries Agency (FFA)), Fiji, Poland, UK (on behalf of its territories in the Caribbean and the Southern Atlantic), Brazil, Sweden, Sri Lanka, Mexico, Ukraine, Tanzania, Sierra Leone, Colombia, Cook Islands, Trinidad and Tobago (on behalf of the 12 member States of the Caribbean Community (CARICOM)), Indonesia, Philippines, Ecuador, India, Iceland, Costa Rica, Latvia, Cuba and Kiribati. In addition, the following IGOs and NGOs made statements: FAO, IOC-Unesco, FFA, Inter-American Tropical Tuna Commission (IATTC), Greenpeace International, World Wide Fund for Nature (WWF) UK (on behalf of the National Audubon Society and the Council for Oceans Law of the USA), Alaska Marine Conservation Council, Oceans Institute of Canada, Fogo Island Fish Cooperative, and the Four Directions Council.[27]

At the conclusion of the general statements, and on the basis of written submissions provided by some States, the Chairman identified those key issues before the Conference where there was some measure of agreement.[28] The issues identified by the Chairman included the following:

(i) the 1982 Convention to be the framework within which conservation and management measures for the two types of stocks would be developed;

(ii) a clear need for conservation and management of straddling fish stocks and highly migratory fish stocks and that such conservation and management should be compatible over stock ranges;

(iii) international cooperation is required for effective conservation and management;

(iv) a need for an international code of conduct for international fishing;

(v) effective flag-State enforcement to be exercised on the high seas in respect of the two types of stocks;

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[26] Document A/CONF.164/11, "Statement made by the Chairman of the Conference at the Opening of the Second Session, Held on 12 July 1993".

[27] Throughout this paper reference to China and Korea means the Peoples' Republic of China and the Republic of Korea, respectively.

[28] Document A/CONF.164/12, "Statement Made by the Chairman of the Conference at the Conclusion of the General Debate on 15 July 1993".

(vi) data and information are essential for the development of conservation and management measures and that in the absence of such data a precautionary approach to management should be invoked;

(vii) regional conservation and management practice should be based on globally agreed principles to ensure uniformity and consistency;

(viii) the principle of resource sustainability is an essential component of conservation and management;

(ix) proper monitoring, control and surveillance (MCS) is necessary for effective conservation and management;

(x) effective conservation and management to be underpinned by proper dispute settlement mechanisms;

(xi) conservation and management measures not to be undermined by the activities of States not party to regional management arrangements and new entrants to fisheries need to be accommodated inasmuch as this is possible, and

(xii) technical cooperation to be extended to developing countries to enhance their capabilities in fisheries conservation and management.

After providing this summary, the Chairman pointed out that the Conference had discharged the first component of its mandate in that existing problems relating to straddling fish stocks and highly migratory fish stocks had been identified and their relative importance assessed.

Having made this assessment, the Conference commenced to consider in greater detail the issues before it. This was done on the basis of a comprehensive and well-structured guide to the issues prepared by the Chairman.[29]

The guide to the issues was presented in two sections: (i) the purpose of the Conference, and (ii) issues to be addressed by the Conference. The latter section included:

(i) the nature of conservation and management measures to be established through cooperation;

(ii) the mechanisms for cooperation;

(iii) the responsibilities of regional fisheries organizations or arrangements;

(iv) compliance with conservation and management measures;

(v) enforcement of high seas fisheries;

(vi) conservation and management measures;

(vii) non-parties to a regional agreement or arrangement;

(viii) the settlement of disputes on matters of a technical nature, and

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[29] Document A/CONF.164/10, "A Guide to the Issues Before the Conference Prepared by the Chairman".

(ix) compatibility and coherence between national and international conservation measures for the same stock.

The importance and practical benefit of the Chairman's paper on the issues before the Conference was that it sharply focused discussion on the range of complex and difficult issues under consideration, facilitating forward movement in debate and negotiation. In a structured and methodical way participants were invited to outline their respective positions on the various issues. Some of the issues were considered in informal sessions as a means of giving States maximum flexibility in discussion and debate.

As the basis for a negotiating strategy the Chairman sought initially to develop points of agreement and preliminary text on relatively non-controversial technical straight-forward issues such as data and information requirements for effective conservation and management. With some technical points and text virtually agreed, the informal sessions then progressed to consider more difficult matters such as the question of compatibility in conservation and management between EEZs and the high seas. On issues such as these, no clear consensus existed between coastal States and DWFNs.

Drawing on national positions outlined by States both in plenary and in informal sessions, and taking account of other information (e.g., statements of NGOs and subregional or regional fishery organizations) before the Conference, the Chairman elaborated the first draft of a negotiating text.[30] The text paralleled closely the issues identified by the Chairman in his discussion paper. After the introduction, the negotiating text addressed:

(i) the nature of conservation measures to be established through cooperation;

(ii) mechanisms for international cooperation;

(iii) regional fisheries management organizations or arrangements;

(iv) flag State responsibilities;

(v) compliance and enforcement of high seas fisheries conservation and management measures (compliance and enforcement by flag States and regional arrangements for compliance and enforcement);

(vi) port States;

(vii) non-parties to a subregional or regional agreement or arrangement;

(viii) dispute settlement;

(ix) compatibility and coherence between national and international conservation measures for the same stock;

(x) special requirements of developing countries, and

(xi) review of the implementation of conservation and management measures.

After the Chairman tabled his negotiating text, the Conference moved to consider it in depth, and as a consequence of having text with which to work, discussion became even tighter and more focused than it had been previously. It was essentially at this point in the Conference that serious negotiations among

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[30] Document A/CONF.164/13, "Negotiating Text Prepared by the Chairman of the Conference". This document was reissued by the Secretariat, for technical reasons, on 23 November 1993 as A/CONF.164/13*.

States commenced, as opposed to national posturing and the delivery of general statement and the reiteration of national positions.

While the form of the outcome of the Conference had not been considered previously in detail, it was evident from discussion on this matter that there were markedly differing positions among States. Some States, and most notably coastal States, expressed the view that the conservation and management of high seas resources could not be guaranteed, nor would conservation and management be effective, in the absence of a legally binding instrument to govern the exploitation of straddling fish stocks and highly migratory fish stocks.

Indeed, early in this session a group of 'like-minded States' sponsored a paper, drafted in convention format, for consideration by the Conference.[31] However, some coastal States and DWFN delegations expressed the view that the tabling of the document was premature, and even ill-timed, because all the issues before the Conference had not been considered in sufficient depth. For this reason, this draft convention failed to gain the attention it probably deserved, nor to have a significant and sustained impact on the Conference's deliberations.

On the question of form, other States, and especially those with distant-water fishing interests (e.g., China, EC, Japan, Korea and Poland) indicated that a declaration on conservation and management or UNGA resolution, for example, would be a more appropriate form of the outcome of the Conference.

At the end of the second session the Chairman submitted that substantial progress had been made in fulfilling the mandate set out in UNGA resolution 47/192.[32] He summarized briefly the status of the issues that had been discussed during the session, and proposed that the Conference agree that:

(i) there should be two further sessions during 1994 with dates to be confirmed by the UNGA at its forty-eighth session;

(ii) facilities be made available to permit two simultaneous meetings during the session, and

(iii) FAO be requested to provide two information papers on the precautionary approach to fisheries management and reference points for fisheries management, in advance of the third session.

These three proposals were endorsed by the Conference.

Closing statements on 30 July 1993 were made by Solomon Islands (on behalf of the 16 members States of the FFA), Peru, Colombia, Russian Federation, Japan, Argentina, UK (in response to a query by Argentina concerning the composition of the UK delegation), Korea, Canada, Norway, New Zealand, Australia, EC (on behalf of its 12 member States), Trinidad and Tobago (on behalf of the 12 member States of CARICOM), China, Iceland, South Pacific Permanent Commission (CPPS), Fiji, Women's Fisheries Network, Fishermens' Food and Allied Workers of Canada, and the Japan Federation of Tuna.

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[31] Document A/CONF.164/L.11, "Draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas". The document was sponsored by Argentina, Canada, Chile, Iceland and New Zealand. In the course of the second session the document was revised and reissued as A/CONF.164/L.11/Rev.1.

[32] Document A/CONF.164/15, "Statement Made by the Chairman of the Conference at the Closing of the Second Session, Held on 30 July 1993."

At its Forty-eighth Session in 1993, the UNGA received a progress report on the Conference.[33] Following considerable and substantial debate, the UNGA resolved that the three proposals endorsed by the Conference at its second session be accepted and requested the United Nations Secretary-General to report again on progress at the Conference at the Forty-ninth Session of the UNGA in 1994.[34]

4.3 Third session (14-31 March 1994)

At the third session of the Conference, the Chairman in his opening statement again emphasized the need for the Conference to achieve international cooperation for the effective conservation and management of straddling fish stocks and highly migratory fish stocks.[35] He also informed the Conference, *inter alia*, that FAO's Compliance Agreement was open for signature, that FAO had convened an *Ad hoc* Consultation on the Role of Regional Fishery Agencies in Relation to High Seas Fishery Statistics (*Ad hoc* Consultation),[36] and that work was progressing in FAO on the development of the Code of Conduct for Responsible Fisheries.[37] The Chairman pointed out that all of these initiatives were relevant to the work of the Conference.

On 14 March 1994 opening statements were made by EC, Peru, Canada, Korea, Argentina, Japan, China, USA, Samoa (on behalf of the 16 member States of the FFA), Ecuador, Russian Federation, New Zealand, Poland, Australia, FAO, Greenpeace International, and the International Commission for the Conservation of Atlantic Tunas (ICCAT).

It was agreed by the Conference that the work of the third session would commence with general remarks by States, IGOs and NGOs and be followed, in informal sessions, by a section-by-section examination of the Chairman's negotiating text. The form of the outcome of the Conference would then be considered and a revised negotiating text would be issued by the Chairman. Concurrent with the plenary or informal sessions, it was further agreed that two working groups would be convened to consider the two critical issues of the precautionary approach to fisheries management, and reference points for fisheries management. Discussion would start from, and be based on, the two documents prepared for the Conference by FAO, as called for in UNGA resolution 48/194.[38]

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[33] UNGA document A/48/479, "Implementation of the Decisions and Recommendations of the United Nations Conference on Environment and Development: Sustainable Use and Conservation of the Marine Living Resources of the High Seas: United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks".

[34] United Nations General Assembly. 1994. *Resolution 48/194 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations. New York. 2p.

[35] Document A/CONF.164/17, "Statement Made by the Chairman of the Conference at the Opening of the Third Session, Held on 14 March 1994".

[36] FAO provided a summary report to the third session on the Ad-hoc Consultation in document A/CONF.164/INF/10. The full report of the of the consultation has been published in FAO. 1994. "Report of the Ad hoc Consultation on the Role of Regional Fishery Agencies in relation to High Seas Fishery Statistics". *FAO Fisheries Report 500*. FAO. Rome. 167p. This report was also made available to the Conference. Significantly, in adopting the report, the Consultation noted that many of the recommendations of the Conference with respect to data could be implemented under the present mandates of FAO and the regional fishery organizations.

[37] The Chairman participated in the Ad-hoc Consultation at La Jolla, USA in December 1993, and in the Informal Working Group on the General Principles for the Code of Conduct on Responsible Fisheries, in Rome at FAO headquarters, in February 1994.

[38] The two documents were document A/CONF.164/INF/8, "The Precautionary Approach to Fisheries with Reference to Straddling Fish Stocks and Highly Migratory Fish Stocks", and document A/CONF.164/INF/9, "Reference Points for Fisheries Management: Their Potential Application to Straddling and Highly Migratory Resources". This document has been published in an expanded form: See FAO. 1993. "Reference Points for Fisheries

The informal sessions prompted intense discussion and negotiation and provided ample scope for the Chairman to refine substantially his negotiating text. While retaining the essential elements, features and structure of the initial negotiating text, the revised Chairman's text was more comprehensive and sophisticated in the treatment of the issues being considered by the Conference.[39]

In its revised form the Chairman's negotiating text contained a preambular section, and articles relating to:

(i) objective;

(ii) application;

(iii) general principles (the nature of conservation and management measures, precautionary approaches to fisheries management, and compatibility);

(iv) international cooperation (mechanisms for international cooperation and regional fisheries management organizations or arrangements);

(v) compliance with an enforcement of high seas fisheries conservation and management measures (duties of the flag State, compliance and enforcement of the flag State, and regional agreements and arrangements for compliance and enforcement);

(vi) port States;

(vii) non-participants in subregional or regional organizations or arrangements;

(viii) dispute settlement;

(ix) special requirements of developing States, and

(x) review of the implementation of conservation and management measures.

The revised Chairman's negotiating text also contained three annexes dealing with:

(i) minimum standards for data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks;

(ii) suggested guidelines for applying precautionary reference points in managing straddling fish stocks and highly migratory fish stocks, and

(iii) arbitration.

Management: Their Potential Application to Straddling and Highly Migratory Resources". *FAO Fisheries Circular No. 864*. FAO. Rome. 52p.

[39] Document A/CONF.164/13/Rev.1, "Revised Negotiating Text Prepared by the Chairman of the Conference".

On 28 March 1994 prior to the conclusion of the third session Ecuador tabled a working paper in the form of a draft convention.[40] Although referred to in subsequent sessions by some Latin American delegations, the draft convention appeared to have little impact on deliberations in the Conference.

In his statement at the close of the third session of the Conference the Chairman indicated that considerable progress had been made towards securing agreement on key issues.[41] He noted that such progress had been made on the important and fundamental issues of the:

(i) coherence in the conservation and management of straddling fish stocks and highly migratory fish stocks in areas of national jurisdiction and in the high seas;

(ii) general principles on which conservation and management should be based;

(iii) international cooperation, including regional and subregional cooperation, for achieving the goal of effective conservation and management, and sustainable resource use;

(iv) compliance with, and the enforcement of, high seas fisheries conservation and management measures, in particular the duties of the flag State in this regard;

(v) role of port States in support of effective conservation and management;

(vi) cooperation required to deal with States that do not participate in the work of regional fisheries bodies or arrangements;

(vii) special requirements of developing countries to enhance their national capacities to more effectively participate in fisheries conservation and management;

(viii) need for compulsory settlement of disputes in support of effective fisheries conservation and management, and

(ix) procedures for the review of the implementation of conservation and management measures adopted by the conference.

In keeping with established UN practice, the Chairman indicated in the third session that he sought consensus on all major decisions taken by the Conference. The inclusion of compulsory settlement provisions and a review process in the Chairman's negotiating text were seen as important measures designed to strengthen the effectiveness with which straddling fish stocks and highly migratory fish stocks would be conserved and managed.

On 31 March 1994, closing statements were made by EC, New Zealand, Ecuador, Peru, Japan, Russian Federation, Tunisia, Samoa (on behalf of the 16 member States of the FFA), Canada, Norway, Argentina, USA, Korea, Trinidad and Tobago (on behalf of the 12 member States of CARICOM), China, Australia, Poland, Chile, Mauritania, Sierra Leone, OLDEPESCA, CPPS and Greenpeace International.

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[40] Document A/CONF.164/L.44 (reissued as L.44*). *Presentation of a Draft Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks on the High Seas*. Submitted by the Delegation of Ecuador. 23 June 1994.

[41] Document A/CONF.164/19,"Statement Made by the Chairman of the Conference at the Close of the Third Session, Held on 31 March 1994".

4.4 Fourth session (15-26 August 1994)

Between the third and fourth session of the Conference an intersessional meeting was hosted in June 1994 by Argentina with the participation of both DWFNs and coastal States: Argentina, Canada, Chile, EC, Iceland, Japan, New Zealand, Norway, Papua New Guinea, Peru, Russian Federation, Sweden and the United States. The FFA also attended. The Chairman's revised negotiating text was the focus of discussion in the meeting, with an emphasis on how to narrow differences on important outstanding issues before the Conference.

The fourth session of the Conference was devoted almost entirely to negotiation. Few new proposals were put forward for consideration, though some States and groups of States sought, through negotiation, to modify substantially particular parts of the Chairman's revised negotiating text.

The Chairman opened the session with a statement reminding the Conference that lack of order and regulation, inappropriate economic policies, and insufficient cooperation between States on fisheries matters had led to a failure of States to properly manage fisheries resources.[42] He continued that voluntary systems of fisheries conservation and management had been ineffective, and that industry subsidization and massive fleet over-capacity were characteristic of the fishing industry. The Chairman pointed out that the right to fish, whether it be in an EEZ or on the high seas, was a conditional right in that the right was accompanied by a duty to conserve and manage resources for both current and future generations.

The Chairman then addressed the issue of the outcome of the Conference and outlined the six key elements that any outcome must contain in order to meet international expectations with respect to effective fisheries conservation and management. These elements were that the outcome of the Conference must:

(i) establish minimum international standards in sufficient detail for the conservation and management of fish resources;

(ii) ensure that the measures taken for conservation and management in the EEZs and in the adjacent high seas areas are compatible and coherent, in order to take into account the biological unity of the stocks and the supporting ecosystem;

(iii) ensure that there is effective mechanisms for compliance and enforcement of those measures;

(iv) provide for a globally agreed framework for regional cooperation in the field of fisheries conservation and management, consistent with the situation prevailing in each region, as is envisaged by the 1982 Convention, and

(v) provide for a compulsory binding dispute settlement mechanism, consistent with the 1982 Convention, while providing the necessary flexibility to the parties to a dispute to use the mechanism of their choice.

On 15 August 1994 general statements were made by Canada, Norway, USA, EC, Japan, Korea, Australia, Argentina, UK (on behalf of its territories), Poland, Peru, India, China, Iceland, Sweden, Uruguay, FAO, Alaska Marine Conservation Council, WWF UK, and Greenpeace International.

The Conference endorsed the work programme proposed by the Chairman and the Bureau for the session. In their general comments most States, IGOs and NGOs did not refer specifically to the Chairman's revised negotiating text, but rather to broader issues of concern. Several States expressed support for a legally binding agreement as the outcome of the Conference, while other States sought an outcome that

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[42] Document A/CONF.164/21 "Statement Made by the Chairman of the Conference at the Opening of the Fourth session, held on 15 August 1994'.

would not be legally binding. Several other States pointed to the need to resolve the issue of form at the fourth session.[43]

Following these remarks, the Conference moved to review the Chairman's negotiating text section-by-section. Many former arguments and positions on issues were restated, but the Chairman and many delegations believed that the debate had led to a further clarification of issues and had permitted the Conference to find new common ground on some issues, including the issue of compatibility. In addition to plenary, the Chairman also convened small informal groups of interested parties to consider issues that could be better dealt with in this way. Discussion in these groups was intensive and tightly focused. These groups contributed significantly to the Chairman's search for neutral language and concepts for the revision of his text.

At the conclusion of the review of the revised negotiating text, the Chairman issued his draft agreement, based on the Chairman's revised negotiating text.[44] The Chairman's draft agreement had a total of 48 articles, consisting of a preamble, 13 parts and two annexes.

Many States expressed support for the content and structure of the Chairman's draft Agreement though the States with high seas fishing interests continued to oppose such a draft Agreement, arguing that the question of form had not yet been decided by the Conference. Nonetheless, and despite objections to the form of the document, in an initial review of the Chairman's draft agreement, States with high seas fishing interests indicated that it was generally a more balanced document than the previous text. However, most coastal States complained that the Chairman's draft Agreement had softened language and concepts too much, tilting the text in favour of the DWFNs. Coastal States indicated that this matter would need to be addressed in the next session of the Conference.

With respect to the role of regional fishery organizations in high seas fisheries conservation and management, there was further debate in plenary about whether minimum standards should be specified by the Conference or whether only guidelines should be provided, leaving decisions as to the actual measures to be adopted by the subregional or regional organizations or arrangements themselves. The latter approach, favoured by States with high seas fishing interests, was not supported by coastal States which maintained that effective conservation and management could not be achieved unless minimum international standards were specified for, and adopted by, all subregional or regional organizations or arrangements.[45]

In his statement at the close of the fourth session,[46] the Chairman with the concurrence of the Bureau, again noted that excellent progress had been made in moving closer to agreement on the outstanding issues before the Conference, but that a further two sessions would be required in 1995 to enable the

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[43] On this point, DWFNs argued consistently throughout the Conference that matters of substance should be agreed prior to reaching agreement on the form of the outcome of the Conference.

[44] Document A/CONF.164/22, "Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks".

[45] Foremost in the thinking of coastal States, and in particular developing coastal States, was the possibility that DWFNs could dominate an organization or arrangement numerically, permitting these States to determine the provisions to be adopted. Developing coastal States also feared the effects of 'cheque-book diplomacy' in these organizations or arrangements and the notion that those States which contributed most to an organization financially would determine the 'rules of the game' for that organization. Consequently, coastal States preferred that the outcome of the Conference specify clearly obligations with respect to data collection and exchange, etc.

[46] Document A/CONF.164/24, "Statement Made by the Chairman of the Conference at the Closing of the Fourth Session, on 26 August 1994".

Conference to discharge fully its terms of reference. The Conference accepted this proposal as the basis for a recommendation for the 1994 Forty-ninth Session of the UNGA.[47]

Having accepted this recommendation for a further two sessions, the Chairman made a plea that no attempt be made at the Forty-ninth Session of the UNGA to re-open debate concerning the terms of reference for the Conference, as these had been negotiated in UNGA resolution 47/192. The Chairman noted that such attempts could hinder the good progress being made in the Conference and, ultimately, be prejudicial to its outcome. In making this plea, the Chairman was clearly seeking the cooperation of all parties to avoid the type of debate that took place at the Forth-eighth Session of the UNGA.

The Chairman also advised the Conference that it was his understanding that there was a widespread and substantial view that a binding outcome was essential. He added that he saw the Chairman's draft agreement as a turning point in the Conference since substance and form has been brought together for the first time. For his part the Chairman undertook to consult widely with States and groups of States in the intersessional period as a means of facilitating progress in the next session of the Conference.

Closing statements on 26 August 1994 were made by Indonesia, Sweden, USA, Russian Federation, Ukraine, Japan, New Zealand, Canada and Greenpeace International. Contrary to the Chairman's assessment in his closing statement, some delegations regarded the close of the fourth session as being a low point in the Conference. This was because little substantive progress had appeared to have been made on several important issues and it was clear that time was running out for the Conference to complete its work.

4.5 Fifth session (27 March - 12 April 1995)

In his opening statement the Chairman outlined the work of the fifth session based on the consensus reached at the close of the fourth session and the directives from the UNGA in its resolution 49/121.[48] Following general statements by States, IGOs and NGOs on the text as a whole, it was proposed that the text should be examined in detail in informal meetings of the plenary. The Chairman indicated that this method of proceeding would enable text to be revised, and further examined so that outstanding issues could be identified.

In his opening statement the Chairman also made note of two sets of intersessional discussions that had taken place since the fourth session; a meeting of DWFN States, convened by Japan, in Tokyo in January 1995, and a meeting of 25 coastal States, convened by the 'like-minded States' in Geneva in February 1995. At both meetings the Chairman's draft Agreement, which was issued at the end of the fourth session, was reviewed and issues clarified, though no conclusions were reached.

At these intersessional meetings proposals had been made for textual changes as a means of enhancing the scope and content of the draft Agreement. The Chairman stressed that the intersessional discussions had been most helpful for the Conference process but that they did not, in any way, pre-empt discussions and negotiations in the Conference proper. He added that the matters which generated most discussion and debate at the intersessional meetings were the issues of compatibility of conservation and management measures in areas under national jurisdiction and in high seas areas; new participants in subregional or regional fisheries organizations or arrangements; enforcement of conservation and management measures in high seas areas by non-flag States, and the desirability of using the provisions of the 1982 Convention with respect to the settlement of disputes.

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[47] United Nations General Assembly. 1995. *Resolution 49/121 United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. United Nations. New York. 2p.

[48] Document A/CONF.164/26 "Statement Made by the Chairman of the Conference at the Opening of the Fifth Session, held on 27 March 1995".

The Chairman also summarized the state of world fisheries, drawing extensively on a recent FAO publication.[49] Without mentioning the States involved, he referred to the international dispute between Canada and Spain in the Western Atlantic Ocean and indicated that such disputes underscored the need for international fisheries cooperation and for the Conference to secure a lasting instrument for the conservation and management of straddling fish stocks and highly migratory fish stocks.

In the opening session on 27 March 1995 statements were made by Canada, EC, USA, Chile, Peru, Australia (on behalf of the 16 member States of the FFA), Thailand, China, Brazil, Japan, Korea, Poland, Iceland, Norway, Argentina, Russian Federation, Ukraine, Bangladesh, Mexico, Ecuador, Morocco, OLDESPESCA and Greenpeace International.

Significantly, the form of the outcome of the Conference was more or less confirmed in the opening session, a matter that had been previously held in abeyance and subject to controversy. In this connexion, the EC noted that "...there is a clear momentum towards a binding international instrument. On this question the EC has stated that it would be flexible.",[50] while Japan indicated that it would acquiesce in favour of a binding arrangement even though its preference was for a non-binding outcome.[51] These two statements were most helpful to progress at the session in that they deflected further discussion on this matter.

The session was largely taken up with intense discussion and negotiation. The session opened with a review of the Chairman's draft Agreement. This review enabled the Chairman to incorporate proposals and suggestions made by States, IGOs and NGOs.

During this initial review of the draft Agreement there was also considerable discussion as to whether the annexes to the draft Agreement should have the same standing as the body of the document. Some delegations argued that the annexes should not be binding and therefore should have a different legal status. However, other delegations led principally by the USA argued most strongly that the annexes must be mandatory if the agreement was to have "real teeth". It was agreed, finally, that the annexes would be an integral component of the Agreement, but that Annex 3, dealing with the settlement of disputes, be eliminated from the draft Agreement in favour of using the dispute settlement provisions of the 1982 Convention.

With respect to Annex 1 of the draft Agreement concerning data requirements for high seas fisheries, FAO submitted a paper to the session reporting on the deliberations of the Coordinating Working Party on Fishery Statistics (CWP).[52] In this document, the CWP recognized the importance of stipulating the minimum data requirements for high seas fisheries and stressed that the requirements in Annex 1 should be considered minimum standards for stock assessment and fishery management. This strong and unambiguous support from the world's major fishery bodies indicated clearly the need for the specification of minimum standards for high seas fisheries in the draft Agreement.

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[49] FAO. 1995. *The State of World Fisheries and Agriculture*. Rome. 57p.

[50] Delegation of the European Commission to the United Nations. 27 March 1995. "Statement Delivered by Commissioner Emma Bonino on Behalf of the European Community at the Fifth Session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. New York. p.4.

[51] Permanent Mission of Japan to the United Nations. 27 March 1995. "Statement by Head of the delegation of Japan at the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks". New York. p.1.

[52] Document A/CONF.164/INF/13 "Comments by the Coordinating Working Party on Fishery Statistics on Annex I of the Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks". The CWP is composed of experts nominated by intergovernmental organizations which have competence in fishery statistics.

Following the initial reading of the draft Agreement, a second review of the text was undertaken by the Conference. This second review enabled a number of outstanding issues to be further clarified, and areas of primary disagreement to be underscored and delineated. Although some delegations continued to have conceptual and textual difficulties with a range of articles in the draft Agreement, it became increasingly evident that there were two primary areas of disagreement: Articles 14 and 21.

Article 14 deals with areas of high seas surrounded entirely by areas under the national jurisdiction of a single State. This issue has been pursued strongly throughout the Conference by the Russian Federation, and in a written submission the Federation further highlighted the fisheries problems in the Sea of Okhotsk.[53] At the end of the fifth session, there was considerable agreement on the revised text for Article 14, but with opposition primarily from two DWFNs - Korea and Poland.

During the session, the Chairman convened a number of informal meetings to discuss Article 21 of the draft Agreement concerning regional agreements or arrangements for compliance and enforcement. It was this Article, which many delegations identified early in the fourth session as being the heart of the Agreement, that presented most difficulty for DWFNs.

The difficulty for DWFNs was the issue of whether non-flag States could apprehend vessels fishing on the high seas, which had undermined, or which were believed to have undermined, internationally agreed conservation and management measures for straddling fish stocks and highly migratory fish stocks. On this point coastal States took the position that the provisions of the 1982 Convention required further elaboration and strengthening, and that the Conference should address this matter directly. DWFNs, on the other hand, argued that it would be contrary to international law to permit the arrest and detention of vessels on the high seas by a non-flag State.

In his closing statement, the Chairman noted that progress had been made in the fifth session.[54] He pointed out that it had been possible to review two versions of the Chairman's draft Agreement prior to issuing the Chairman's revised draft Agreement. The Chairman reminded the Conference that it was mandated to seek means for promoting the effective implementation of the provisions of the 1992 Convention with respect to straddling fish stocks and highly migratory fish stocks. In so doing, the Conference was required to identify and assess problems relating to conservation and management for these stocks and to consider means of improving international fisheries cooperation and the formulation of appropriate recommendations for management.

With respect to the Chairman's draft revised Agreement, the Chairman further noted that he believed that the text balanced the interests of coastal States and DWFNs. He added that the collective interest of the international community must be taken into account if sustainable use of high seas resources was to be secured. The Chairman pointed out that the text, as it stood, created three essential pillars: (i) it provided the principles and practices on which enhanced stock management should be based; (ii) it ensured that conservation and management measures adopted for high seas fisheries would be adhered to and complied with and that they would not be undermined by those engaged in high seas fishing; and (iii) it provided for the peaceful statement of disputes, in accordance with the relevant provisions of the 1982 Convention.

In conclusion, the Chairman urged all participants to study the Chairman's draft revised Agreement with an open mind and not to lose track of the importance of achieving long-term sustainable use of high

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[53] Document A/CONF.164/L.49 "Letter Dated 30 March 1995 From the Head of the Delegation of the Russian Federation Addressed to the Chairman of the Conference: Growing Threat of the Destruction of Alaska Pollack Stocks in the Sea of Okhotsk as a Consequence of Large-scale Unregulated and Unscientific Fishing in its Enclave".

[54] Document A/CONF.164/28, "Statement Made by the Chairman of the Conference at the Close of the Fourth Session, on 12 April 1995".

seas fisheries resources. Noting that the sixth session of the Conference would be its last, the Chairman stated that he looked forward to the cooperation of all delegations in finalizing the Agreement at that session.

The fifth session was a very productive one in that all delegations negotiated flexibly and in a spirit of understanding. At the conclusion of the session, the Chairman indicated, and all delegations agreed, that the next session of the Conference scheduled for July/August 1995, must be the last session. While adjustments needed to be made to the text to ensure conformity in all languages, the only articles that remain substantially outstanding were Articles 14 and 21. These articles will be informally addressed by the Chairman and delegations during the intersessional period and they will be considered formally at the commencement of the next session. When agreement is secured on wording for the articles, the focus of the Conference will move to authentication and standardization, etc., of the texts in the official languages. It is still envisaged that the agreement will be open for signature at the end of the next session.

Concluding statements were made on 12 April 1995 by Brazil, Peru, Estonia, Norway, Chile, USA, the EC, Japan, Indonesia, China, Australia (on behalf of the 16 member States of the FFA), Argentina, Poland, Russian Federation, Uruguay, Korea, Canada, Iceland, Senegal, Morocco, Sri Lanka, Mexico, Greenpeace International, and WWF UK.

At the conclusion of the fifth session the Chairman re-issued his draft Agreement.[55]

4.6 Sixth session (24 July - 4 August 1995; resumed 4 December 1995)

In his opening statement, the Chairman stressed the need for a consensus outcome at the Conference, and he urged all States to show flexibility in their negotiations. He noted that the work of the Conference must be concluded at this session.

In keeping with past practice the Chairman reported on two intersessional meetings that had been held since the fifth session. The first of these meetings had been convened by the United States in Washington DC in June 1995. Key DWFNs and coastal States participated in this meeting: Argentina, Canada, EC, Japan, Korea and New Zealand. The Washington DC meeting led to the drafting of a non-paper by the United States on Article 21. This non-paper became a centrepiece for discussion in the sixth session in the Chairman's efforts to secure agreement in the Conference on this Article. The second meeting was convened in New York by the Chairman immediately prior to the opening of the session.[56] Both of these intersessional meetings focused on Article 21 of the Chairman's Draft Agreement. This Article, which was subsequently split into two Articles in the final Agreement (Articles 21 and 22), concerned regional agreements and arrangements for compliance and enforcement.

Article 21 of the Chairman's Draft Agreement had been identified previously as being the most controversial and difficult Article in the text. This was because this Article effectively involved an extension of international law in that authorized personnel from one State, within the framework of subregional or regional organizations or arrangements, could board and inspect vessels, fishing on the high seas, from another State. This issue was extremely sensitive in terms of the legal principles involved since DWFNs viewed such a provision as an erosion of flag State control; a principle clearly enshrined in the 1982 Convention.

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[55] Document A/CONF.164/22/Rev.1 "Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks". 37p.

[56] States attending this intersessional meeting included both coastal States (Australia, New Zealand, USA, Indonesia, Iceland, Peru, Chile, Mexico, Senegal, Jamaica, Russian Federation, Papua New Guinea, Fiji, Canada, Solomon Islands, Mauritania, Norway, Argentina, Colombia and Uruguay) and DWFNs (EC, Poland, China, Japan and Korea). Greenpeace International made a statement on behalf of NGOs but they were not invited to participate as observers in the meeting.

The work of the sixth session opened with an article-by-article review of the text of the Chairman's Draft Agreement. In the intersessional period the Secretariat had studied the text and had proposed drafting changes to make it internally consistent and to bring the text in line with the 1982 Convention. This revised text of the Chairman's Draft Agreement was issued as a conference room paper[57] and formed the basis of the initial review of articles.

Following opening statements on 24 July 1995 by States, IGOs and NGOs that included Canada, Poland, Samoa (on behalf of the 16 member States of the Forum Fisheries Agency), EC, USA, Norway, China, Japan, Korea, Peru, Argentina, Malaysia, Ukraine, Brazil, Philippines, Sri Lanka, Russian Federation, Uruguay, CPPS, Greenpeace International and the Offshore Fishworkers' of Chile, Peru, Argentina and Ecuador, the Conference met in informal sessions to consider the Chairman's Draft Agreement. In general there was a reluctance to alter the text significantly as most delegations, and in particular those States that had been represented at all sessions of the Conference, recognized the delicate and sensitive balance that had been struck in negotiations in previous sessions.

Most negotiating time in the sixth session was taken up with Articles 14, 21 and the final provisions of the Agreement.

Article 14 (which became Article 16 in the final Agreement) concerned areas of the high seas surrounded entirely by an area under national jurisdiction of a single State. This Article had been problematic in previous sessions and primarily focused on the fisheries situation with respect to pollock stocks in the Sea of Okhotsk.

The text for Article 14, as considered by the Session, was based on text proposed by Canada, Norway, Peru, Russian Federation, and the United States at the fifth previous session and, as such, essentially reflected a coastal State position.[58] It would seem that the United States was associated with this proposal because it did not want to witness the collapse of the fishery in the Sea of Okhotsk, as had been the case with the valuable fishery in the Bering Sea.[59]

In the debate on Article 14 the Russian Federation argued that the fisheries conservation and management measures adopted for straddling fish stocks by the coastal State in its EEZ must be respected when conservation and management measures for the high seas enclave were being drawn up and implemented. Poland on the other hand, with the support of Korea and China, all of which have important fisheries in the Sea of Okhotsk, sought to minimize any restrictions that might be imposed on fishing

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[57] Document A/CONF.164/CRP.7, "Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks".

[58] In the proposal made at the fifth session on 6 April 1995, Norway was not party to the proposal. However, subsequently, at the sixth session, Norway subscribed to the proposal. There was reasonably strong coastal State support for the jointly sponsored proposal on the grounds that the Sea of Okhotsk was a special case situation and that the coastal State rights of the Russian Federation needed to be protected.

[59] At the fifth session the USA gave a striking account of events that led to the collapse of the Bering Sea fishery and the subsequent agreement to implement conservation and management measures by parties that had fished for pollock stocks in the area. It was noted that it would have been very difficult to secure international agreement on conservation and management measures in the absence of the fishery's collapse.

activities in the high seas enclave.[60] Intensive negotiations between the Russian Federation and Poland lasted on this issue right up until the final meeting of the session, when text was agreed.

The renegotiation of Article 21, and subsequently Article 22, was the main substantive issue of debate at the sixth session. While the two intersessional meetings in Washington DC and New York had refined the Chairman's draft text on these articles, and had led to a convergence of positions between coastal States and DWFNs, there remained several matters in this article that required substantial negotiation. These matters included:

(i) the boarding and inspection of vessels within the context of subregional or regional organizations or arrangements;

(ii) clarification of the roles of, and procedures for, the flag State and the inspecting State in cases where vessels are boarded and violations have, or have not been committed;

(iii) detention of crew;

(iv) the listing of serious violations (e.g., fishing without a licence, failing to maintain accurate records of catch and catch-related data, fishing in a closed area, using prohibited fishing gear etc.), as opposed to providing a definition of a serious violation;

(v) application of the proportionality principle when action is taken by a non-flag State against a vessel that has operated contrary to subregional or regional conservation and management arrangements, and

(vi) the liability for damage or loss arising from enforcement action taken in accordance with Article 21.

For clarity, the Conference opted to include in the new Article 22, basic procedures for boarding and inspection pursuant to Article 21. The purpose of including these procedures in the Article was to provide guidance for boarding and inspection and to try to ensure that abuses did not result.

With respect to the final provisions of the Agreement (Part XIII), there was considerable negotiation, albeit in a small group, concerning the provisions relating to the EC. A change in the EC situation vis-a-vis its competence in fisheries matters since the adoption of the 1982 Convention meant that Annex IX of the 1982 Convention relating to the participation by international organizations, could not be simply cross referenced in the Agreement. Rather in Article 47 (Participation by International Organizations) of the Agreement, the application of Annex IX of the 1982 Convention is qualified with respect to the application of the Agreement.[61]

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[60] During the discussion on issues relating to the Sea of Okhotsk, it was pointed out by Poland that 80 percent of its high seas catches are taken in this area and there are 30 to 50 Polish flag vessels operating in the fishery. Poland advised the Conference that, despite several attempts, it had not been possible to conclude a bilateral agreement with the Russian Federation on fishing in the Sea of Okhotsk. China informed the Conference that its flag vessels had been operating in the Sea of Okhotsk since 1991 and most of China's catches (130-150 000 tonnes) are taken in this area. It was pointed out that China has a bilateral agreement with the Russian Federation. Under this agreement China has reduced fishing to 3 months per year in the Sea of Okhotsk and the number of vessels has also been reduced. The Conference was told that Korean and Japanese flag vessels no longer operated in the Sea of Okhotsk.

[61] Some States were critical of the Secretariat in not having tried to address/solve this issue prior to the final session. These States believed that the Secretariat could have worked with the Chairman, EC and a representative group of coastal States in order to try to secure text that might have been acceptable to the Conference as a whole.

During the sixth session the Chairman issued two revisions of the draft Agreement, as Conference Room Papers, prior to the adoption of the Agreement. In addition, there were several versions of Articles 16, 21 and 22 and the final provisions circulated by the Chairman. Indeed, the Chairman's capacity to work so decisively and speedily under tight time and administrative pressures was noted by almost all delegations in their closing statements.

On 4 August 1995 the Conference adopted, by consensus, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

The Conference also adopted, at the same time, the Final Act of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. The Final Act, given in Annex 2, provides a factual summary of the Conference and contains two resolutions concerning the Early and Effective Implementation of the Agreement, and Reports on Developments by the Secretary-General of the United Nations. With respect to the second resolution, the Secretary-General of the United Nations, *inter-alia*, is requested to cooperate with FAO to ensure that there is coordination in reporting for all major fisheries instruments and activities so as to avoid duplication and to minimize the reporting burden for national administrations.

The Conference agreed that the Final Act of the Conference and the Agreement would open for signature on 4 December 1995. The Agreement will enter in force 30 days after the receipt of the thirtieth instrument of ratification or accession.[62]

In debate on this matter concerning the number of ratifications or accessions to bring the Agreement into force, DWFNs and some Latin American States sided against other coastal States. Chile opened the debate by supporting 40 instruments of ratifications or accessions and, in turn, was supported by EC, Mexico (which indicated that the number could be as high as 60 ratifications or accessions), Japan, Uruguay, Colombia, Korea, China and Poland. For the grouping of coastal States, Peru proposed that 20 ratifications or accessions be required to give effect to the Agreement, and in so doing, was supported by Argentina, New Zealand, USA, Papua New Guinea, Canada, Australia, Indonesia, Iceland, Namibia, Norway, Federated States of Micronesia and Russian Federation.

On 4 August 1995 closing statements were made by Canada, Norway, EC, Russian Federation, Chile, United States of America, Mexico, Japan, Panama, Turkey,[63] China, Korea, Peru, Philippines, Argentina, Estonia, Colombia, Australia (on behalf of the 16 member States of the Forum Fisheries Agency), Poland,

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[62] The Chairman's draft revised Agreement proposed that 40 instruments of ratification or accession be required to bring the Agreement into force. The Chairman explained that this number had been chosen to parallel the number of ratification or accessions required to give effect to Part XI of the 1982 Convention (see *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982*). However, this number was opposed by coastal States at the Conference on the grounds that such a number could impede the early entry into force of the Agreement. DWFNs, on the other hand, sought to retain the number of ratification or accessions at 40, arguing that such a number was needed to ensure that the Agreement had the strong force of law. In the debate, to find common ground, the Chairman proposed a figure of 25 on the basis that it would match the number of States required to using the Compliance Agreement into force. Some DWFNs, and notably Japan, explained that this was not a valid comparison as the Compliance Agreement and the outcome of the Conference were fundamentally different instruments. Finally, after considerable discussion in the Conference a compromise was reached whereby it was agreed that 30 instruments of ratification or accession would be required to bring the Agreement into force.

[63] The representative from Turkey advised the Conference that her country would not sign the Agreement as it was based on the 1982 Convention and Turkey was unable to sign the Convention.

Namibia, Uruguay, Syria, Papua New Guinea, FAO,[64] WWF UK, Greenpeace International, and the International Collective in Support of Fishworkers. Most statements, *inter alia*, recognized the exceptional skills, energy and stamina of the Chairman of the Conference in bringing it to a successful conclusion, with a consensus decision rather than a decision by voting.[65]

In their closing statements following the adoption of the Agreement, several delegations, and in particular DWFNs, indicated that they would advise the Chairman in due course if their respective States were in a position to sign the Agreement. The EC addressed the Chairman of the Conference by letter requesting that it be circulated as a document of the Conference.[66] Most coastal States were enthusiastic about the outcome of the Conference, hailing it as, in the words of the Ambassador of Peru "... a significant step in the progressive development of international law ...".

In his closing statement the Chairman congratulated the Conference on adopting a far-sighted, bold and revolutionary instrument. He noted that the provisions of the Agreement were both practical and realistic, and firmly rooted in the principles of the 1982 Convention.

The Chairman pointed out that the Agreement was built on three pillars in that it:

(i) set out the principles on which conservation and management of straddling fish stocks and highly migratory fish stocks must be based and established that such management must be based on the precautionary approach and the best scientific information available;

(ii) ensured the conservation and management measures are adhered to and complied with, and that they are not undermined by those that fish for the two types of stocks, and

(iii) provided for the peaceful settlement of disputes.

The Chairman also stated that he believed that if the Conference had not adopted a strong and binding Agreement, the Conference would have failed the international community and would have contributed further to the demise of the major international fishery resources. Furthermore, he warned that international conflict would have continued as frustrated States sought to initiate unilateral action to solve problems that could only have been addressed multilaterally. Moreover, the Chairman made mention that the elaboration of the Code of Conduct for Responsible Fisheries and this Agreement would serve to strengthen conservation and management practice around the world. He called for the rapid implementation of the Agreement and urged governments to demonstrate their commitment in a tangible manner by signing the Agreement and becoming Parties to it as soon as possible.

On 4 December 1995, the sixth session of the Conference resumed and the Final Act of the Conference and the Agreement were opened for signature at United Nations Headquarters in New York.

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[64] It was noted that the Conference could be assured of FAO's support, within staff and financial limits, to assist with the implementation of the Agreement. It was further noted that implementation of the Agreement would be coordinated with other instruments such as the Compliance Agreement and the Code of Conduct for Responsible Fisheries.

[65] Possibly in anticipation of a vote, there was stronger representation at the sixth session than there had been at previous sessions. During the session, the Chairman and Secretariat urged States to ensure that their credentials were in order in the event that a vote was required.

[66] Document A/CONF.164/L.50, "Letter dated 4 August 1995 from the European Community Addressed to the Chairman of the Conference". *Inter alia*, the letter indicated that "The European Community, through its competent authorities, will evaluate the Agreement in order to see whether this mandate (of the Conference) has been achieved".

At the commencement of the session the Chairman called the resumed session to order and made a short opening statement.[67] He pointed out that the binding Agreement adopted by consensus on 4 August 1995 was detailed and precise, based on sound principles providing a blueprint for fisheries conservation and management with a view to long-term sustainable use of resources; responded effectively to the environmental concerns of the international community, as called for at the 1992 Rio Summit, establishing an ecosystem approach to fisheries management based on the best available scientific data and a precautionary approach to management; was reinforced by clear provisions on enforcement of conservation and management measures and procedures for the compulsory settlement of fisheries disputes; emphasised the pivotal role of subregional or regional organizations or arrangements, and was linked intrinsically to the 1982 Convention.

The Chairman further added that although the Agreement applied only to straddling fish stocks and highly migratory fish stocks, the principles enunciated therein had application to all fisheries, particularly with respect to its environmentally-based provisions. He added that the principles on the application of the precautionary approach to fisheries conservation and management could be regarded as being on the cutting edge of sound fisheries management.

It was also noted by the Chairman that the Agreement was already having an impact on the work of subregional or regional fisheries organizations or arrangements around the world, as members of these organizations had started to assess the effects of the Agreement on the respective mandates of their organizations. In this connection particular attention was being paid to issues concerning conservation and management measures, decision-making, and transparency.

While reiterating that according to FAO some 70 percent of the world's fish stocks are in serious difficulty, the Chairman noted that this Agreement would provide a basis for dealing with some of the stocks that are excessively exploited, but added that the ultimate success of the Agreement would depend on how faithfully it was implemented by those involved in fisheries targeting straddling fish stocks and highly migratory fish stocks.

Finally, the Chairman pointed out that a large number of delegations were not able to sign the Agreement on 4 December 1995 for technical and other reasons. Some important DWFNs and organizations entitled to sign the Agreement would do so at an early date as soon as their respective internal procedures had been finalized. Consequently, the Chairman emphasised that the delay in signing the Agreement should not be construed as a lack of support for the Agreement by these States and organizations.

On behalf of the UN Secretary-General, the Legal Counsel delivered a statement noting, *inter alia*, that the conclusion of the Agreement was a significant achievement and one that would, if fully implemented, lead to enhanced fisheries conservation and management for straddling fish stocks and highly migratory fish stocks.

The US Ambassador to the UN, as UN host country, stated that the Agreement struck a reasonable balance between conservation and fishing concerns, and between the interests of coastal States and States whose vessels fish on the high seas.[68] If ratified widely and implemented properly, the Agreement will improve the health of ocean ecosystems and ensure a lasting supply of fish to feed the world's population.

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[67] Republic of Fiji Mission to the United Nations. 4 December 1995. *Statement of the Chairman, Ambassador Satya N. Nandan (Fiji) at the Resumed Sixth Session of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, 4 December 1995, United Nations, New York.* 3p.

[68] United States Mission to the United Nations Press Release #228-(95). 4 December 1995. *Statement of Ambassador Madeleine K. Albright, United States Permanent Representative to the United Nations, on the Occasion of the Signature of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, at the United Nations, December 4, 1995.* New York. 2p.

The Ambassador further noted that the Agreement complemented the 1993 Compliance Agreement which, is itself, an integral component of the Code of Conduct. She added that the conclusion of the Agreement was a laudable achievement.

Complementing the remarks by the US Ambassador to the UN, Senator Ted Stevens from Alaska pointed out that the Agreement was a major steps forward for fisheries conservation and management. He stated that he would work hard to ensure that the US ratified the Agreement and ultimately, that bycatch was eliminated from fisheries in the US EEZ.

At the resumed sixth session the Final Act of the Conference was signed by 45 States and organizations. These States and organizations included Antigua and Barbuda, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Cuba, Ecuador, EC, Fiji, Finland, Grenada, Guinea-Bissau, Iceland, India, Indonesia, Israel, Italy, Jamaica, Japan, Marshall Islands, Micronesia (Federated States of), Morocco, Namibia, Netherlands, New Zealand, Niue, Norway, Papua New Guinea, Peru, Poland, Portugal, Korea, Russian Federation, Samoa, Senegal, Spain, Tonga, Ukraine, UK, USA and Uruguay.

Representatives from some delegations expressed the view that it was surprising that some delegations that had participated actively in the Conference had not signed the Final Act. Notably absent from the resumed sixth session were China and Thailand, both of which had played an important role in the deliberations of the Conference.

The Agreement was signed by 25 States. These States included Argentina, Australia, Bangladesh, Brazil, Canada, Fiji, Guinea-Bissau, Iceland, Indonesia, Israel, Jamaica, Marshall Islands, Micronesia (Federated States of), Morocco, New Zealand, Niue, Norway, Papua New Guinea, Russian Federation, Samoa, Senegal, Tonga, Ukraine, UK and USA. The Agreement will remain open for signature for one year from 4 December 1995.

Closing statements, principally to clarify national positions, were made by the EC, Ecuador and Peru. The EC informed the Conference that it was not possible for the EC and its Member States to sign the Agreement at the present time since internal procedures were not yet completed.[69] Similarly, Ecuador and Peru advised the Conference that internal analyses were also being undertaken on the Agreement.

5. THE AGREEMENT

The Agreement adopted by the Conference on 4 August 1995 is in Annex 3. The Agreement consists of a Preamble and 3 Parts divided into 50 Articles. It also has two annexes dealing with the standard requirements for the collection and sharing of data and guidelines for the application of precautionary reference points in the conservation and management of straddling fish stocks and highly migratory fish stocks.

Significantly, Article 36 of the Agreement provides for a review Conference, four years after the Agreement's entry into force, to assess its effectiveness in securing the conservation and management of Straddling Fish Stocks and Highly Migratory Fish Stocks. Through this review mechanism, there will be a degree of international pressure for all parties associated with the conservation and management of these stocks to take tangible and concrete steps towards this end.

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[69] European Union Delegation of the European Commission to the United Nations. 4 December 1995. *Statement Made by the European Commission on Behalf of the European Community and its Member States Concerning the Signature of the Agreement and the Final Act of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*. 1p.

6. PARTICIPATION AND GROUPINGS OF STATES IN THE CONFERENCE

The Final Act of the Conference (Annex 2) provides a long and impressive list of States that participated in the Conference. However, representatives from many of these States only attended the sessions intermittently, and most States did not participate actively in debate in either formal or informal sessions. Indeed, it was pointed out by Peru, in debate at the sixth session, that only about 40 to 50 States had participated to a significant extent in the Conference.[70]

The primary dichotomy on most issues in the Conference was between States with distant-water fishing interests and coastal States, with the former group being heavily outnumbered in terms of the latter group. The intensity of debate and discussions at the Conference illustrated, in a classic manner, the highly political nature of fisheries conservation and management.

6.1 Distant-water fishing nations

All of the world's leading DWFNs participated actively in the Conference, and on all major issues before it. This grouping of States including China, Estonia, EC, Japan, Korea, Poland, Thailand and Ukraine, strongly defended their distant-water fishing interests. This situation is understandable given the national importance of high seas fishing to these States. In 1993 these States took 3.1 million tonnes of fish of all species on the high seas, representing 65 percent of the total high seas catch.[71]

In Conference discussion and debate, DWFNs argued principally from the 'freedom of the high seas' premise, as set forth in Article 87 of the 1982 Convention. While DWFNs saw the need for the more effective conservation and management of high seas fish stocks as a means of arresting further resource degradation, there were fundamental differences with coastal States on how and what measures needed to be put in place in order to prevent further stock depletion and to allow them to be rebuilt.

At issue for DWFNs throughout the Conference was the primary concern that their conditional right to fish on the high seas would be eroded through the progressive development of international law. Indeed, some DWFNs viewed the Conference simply as an attempt by some coastal States to extend national influence beyond the provisions of Part V of the 1982 Convention.

In debate these States generally sought to minimize the regulation of high seas fisheries through precisely described global measures. Rather the DWFNs maintained that the outcome of the Conference should specify conservation and management arrangements in broad terms only, and that subregional or regional organizations or arrangements should have the responsibility for developing and implementing arrangements based on subregional or regional needs, taking into account the dynamics of particular fisheries.

The major issues for DWFNs in the Conference centred around the issues relating to the compatibility of conservation and management measures; areas of high seas surrounded entirely by an area under the national jurisdiction of a single State; duties of the flag State; international cooperation in enforcement on the high seas, and port State measures. While supporting fully the special requirements of developing States under the Agreement, the DWFNs at times expressed concern in the Conference about those developing States that already had well developed domestic fleets which were now fishing to a significant extent on the high seas. The DWFNs sought to ensure that these developing States with large industrial fleets were not

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[70] Statement by the representatives of Argentina and Peru in debate on Article 39 of the draft Agreement on 1 August 1995.

[71] Data taken from FAO fisheries database. For the EC, high seas catches by France, Italy, Spain and Portugal accounted for 98 percent of the total. Spain is by far the most important DWFN in the EC in terms of catch. In 1993, Spain took 65 percent of the EC total high seas catches.

exempted from meeting obligations under the Agreement by virtue of the level of their economic development.

6.2 Coastal States

Both developing and developed coastal States were strongly represented at the Conference. However, not all coastal States had a congruent interest in the outcome of the Conference, and while they were united on many issues before the Conference, there were discernable schisms on some important issues such as the application of the precautionary approach in fisheries and data requirements for conservation and management.

An important grouping of coastal States in the Conference was the Like-Minded Group of States. This Group was led by a core-group consisting of Argentina, Canada, Chile, Iceland, New Zealand, Norway and Peru,[72] while the broader membership included Antigua and Barbuda, Australia, Bahamas, Barbados, Belize, Benin, Brazil, Cape Verde, Colombia, Costa Rica, Cuba, Dominica, Ecuador, Gambia, Ghana, Grenada, Guinea-Bissau, Guyana, India, Indonesia, Jamaica, Kenya, Malaysia, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Morocco, Namibia, Nicaragua, Nigeria, Norway, Pakistan, Papua New Guinea, Peru, Philippines, Russian Federation, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Senegal, Seychelles, Sierra Leone, Solomon Islands, Sri Lanka, Trinidad and Tobago, Tunisia, United Republic of Tanzania, United States, Uruguay, Vanuatu and Viet Nam.[73] However, some of these States did not take an active role in debate at the Conference.

The core-group of the Like-Minded States met frequently, usually on a daily basis throughout the sessions of the Conference, while meetings of the Group as a whole were less frequent. The core-group of the Like-Minded States also convened intersessional meetings to consider issues before the Conference, to coordinate positions in the debate and negotiations, and generally to develop a common strategy towards the Conference.

In the course of the debate and negotiations at the Conference coastal States were primarily preoccupied with two fundamental inter-related issues: the need to protect the integrity of coastal States' rights and interests with respect to areas of national jurisdiction, as provided for in Part V of the 1982 Convention, and the implementation of conservation and management arrangements for straddling fish stocks and highly migratory fish stocks that would not prejudice or otherwise undermine national efforts to secure proper and sustainable utilization of these stocks within EEZs.

In the early sessions of the Conference there was some support among coastal States for the separate treatment of straddling fish stocks and highly migratory fish stocks, especially by those States that had a significant interest in the former stocks. However, some coastal States, and in particular developing coastal States, believed that such an approach could lead to a disproportionate focus on one type of stock and as a consequence they did not favour such a strategy for negotiation purposes.[74] For this reason there was agreement among the coastal States that both types of stocks should be treated together.

During the deliberations of the Conference it was apparent that some developing coastal States, which already have important high seas fisheries or which have national policies in place to expand into high seas fishing, sought to lessen the restrictions associated with high seas conservation and management, as might be agreed by the Conference, or to use their developing country status to reduce obligations with respect to

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[72] *Earth Negotiations Bulletin.* Vol.7 No. 31. 15 August 1994. p.1.

[73] Compiled from a list of Like-Minded States circulated at the Conference by the Group on 4 April 1995.

[74] Some DWFNs also were reported to have been inclined towards separate treatment for the two types of stocks, reflecting their particular concern for, and involvement with, straddling fish stocks or highly migratory fish stocks.

high seas fishing. This situation put these coastal States at odds with some other developing and developed coastal States on some issues such as the application of the precautionary approach to fisheries conservation and management, data requirements for conservation and management, and duties of the flag State.

For coastal States some of the major issues in the Conference focused on compatibility of conservation and management measures, the role and functions of regional or subregional organizations or arrangements in fisheries conservation and management, non-members of organizations or non-participants in arrangements, flag and port State control, international cooperation in enforcement and effective dispute settlement.

6.3 Developing States

With the exception of some Latin American States, and in particular Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Panama, Peru and Uruguay; small island developing States (SIDS) from the South Pacific including Cook Islands, Fiji, Federated States of Micronesia, Kiribati, Marshall Islands, Papua New Guinea, Tonga, Samoa and Solomon Islands, and Trinidad and Tobago from the Caribbean; African States such as Kenya, Mauritania, Morocco and Senegal, and Asian States including China, India, Indonesia, Malaysia, Sri Lanka and Thailand, developing States generally took a low profile in Conference debate and in the deliberations of the informal working sessions. In a large measure the degree of participation by developing States reflects the economic importance of straddling fish stocks and highly migratory fish stocks to these States and the impact that the outcome of the Conference could be expected to have for these States.[75] As a group in the discussions and debate, the Group of 77 did not play an important role in the Conference process, though the chairperson of the Group made a small number of interventions on matters not germane to the substantive fisheries issues before the Conference.

The Chairman's revised negotiating text, issued at the third session of the Conference, contained a detailed section relating to the special requirements of developing States with respect to the conservation and management of straddling fish stocks and highly migratory fish stocks. Developing States, and in particular those with important economic interests in the two types of fish stocks, played a key role in the debate that led to the strengthening and consolidating of the provisions of this part of the text (see Part VII of the Agreement) and in securing technical assistance commitments from developed States. In discussion on this issue FAO's role in assisting developing States enhance their national capacities for fisheries conservation and management was acknowledged explicitly and subsequently reflected in Article 24 of the Agreement.

One difficulty that many developing States faced with respect to Conference participation was the high cost of sending and maintaining delegates in New York for extended periods of time. It was pointed out by some States that it costs US$ 10 000 per delegate for airfares and per diem for a three week session of the Conference. Few developing States were in a position to afford such high costs and as a result consistency in representation at the Conference was adversely affected.

In accordance with UNGA resolution 47/192, the Conference Secretariat established a voluntary fund to support the participation of developing States in the Conference and some States benefited from that fund. However, the availability and extent of these funds were usually not known well in advance of sessions and this created difficulty for some developing States in planning their participation.

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[75] Highly migratory fish stocks are extremely important for the SIDS in the South Pacific and it was recognized that the outcome of the Conference could have had major economic consequences for many of them. Some South Pacific States derive high proportions of their national income from the exploitation of highly migratory stocks within their respective EEZs. These States have limited alternatives with which to promote economic development, and States such as Kiribati, are almost completely dependent on revenue generated from tuna for their economic survival. This point is often not fully understood or appreciated by DWFNs and other States with few ties with the South Pacific region.

7. ROLE OF INTERGOVERNMENTAL ORGANIZATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

A number of IGOs and a large number of NGOs participated in the Conference. Among the former group were representatives from regional and subregional fisheries organizations.

7.1 Intergovernmental organizations

In line with its mandate in the UN system, FAO played an important role in the Conference through the provision of a Scientific and Technical Adviser to the Conference and most of the technical information on fisheries that was considered by the Conference. At the end of the Conference the FAO undertook, within its financial and technical capacity, to work towards the implementation of the Agreement. In turn, the Chairman paid tribute to the role played by FAO in the Conference noting that the scientific and technical information provided by the Organization had greatly facilitated discussion and debate in the Conference.

Other UN agencies participating in the Conference included the Intergovernmental Oceanographic Commission (IOC) of UNESCO, which also made a number of technical statements available to the Conference, the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP) and the World Bank.

From an early stage in the Conference it was recognized and agreed by States that the outcome would be implemented through subregional or regional organizations or arrangements. Indeed, this issue was never the subject of real debate in any of the Conference sessions. However, for existing subregional or regional fishery organizations or arrangements, the role that these organizations or arrangements will be expected to play in the implementation of the Agreement poses a number of important questions concerning the scope of their mandates and technical capacity to engage in the conservation and management of straddling fish stocks and highly migratory fish stocks.

Regional or subregional fisheries organizations represented at the Conference, and which participated in the debate through the presentation of statements included the IATTC, ICCAT, Latin American Organization for the Development of Fisheries (OLDEPESCA), FFA and CPPS. Some other fishery organizations participated in some sessions but did not enter into the debate.[76]

A number of subregional and regional fishery organizations or arrangements have responsibility for the conservation and management of high seas resources, while other organizations do not. In addition, some FAO regional fishery organizations do not have the required conservation and management mandates.[77] These organizations will need to be thoroughly reviewed and, if necessary, their mandates and functions adjusted, in order to enable them to fulfil the responsibilities they have been given under the Agreement.

FAO has recently appraised the legal, technical and financial capacity of its subregional and regional fishery organizations with a view to assessing their appropriateness for the implementation of the

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[76] The attendance and participation of representatives from subregional and regional fishery organizations in the Conference was not strong. With the exception of the FFA, which attended all sessions and remained for the duration of each session, no other fishery organization attended in such a manner. Other fishery organizations in one or two sessions, or for short periods in several sessions.

[77] These organizations are constituted under articles 6 or 14 of the FAO Basic Texts. See FAO. 1994. *Basic Texts of the Food and Agriculture Organization of the United Nations*. FAO. Rome. 247p.

Agreement.[78] In some instances a sharing of functions is being contemplated such as the approach used in the South Pacific where the South Pacific Commission (SPC) undertakes scientific/technical assessments as a basis for conservation and management. In turn, the recommendations are taken into account by the FFA in proposing the implementation of management decisions by its Members. A similar approach might be considered for some FAO fishery bodies whereby their scientific, technical and advisory management expertise could be combined with existing management decision-making arrangements in their respective regions.

There was a degree of disappointment in the Conference among some States that regional and subregional fishery organizations or arrangements did not have a more active role in the Conference process, given that these organizations or arrangements will be required to largely implement the outcome of the Conference. The Chairman of the Conference was mindful of this consideration and addressed this issue at the end of the second session of the Conference. He also expressed his concern that representatives from these organizations or arrangements had not been given adequate seating, and in fact some representatives were required to sit on the Conference floor with friendly delegations or with the NGOs. Subsequently, UN conference services rectified the matter and representatives from the regional or subregional organizations or arrangements were provided dedicated seating.

7.2 Non-governmental organizations

A large number of NGOs participated in the sessions of the Conference (Annex 2). While the Chairman attempted to accommodate NGO interests as much as possible, the extent of NGO participation and influence in the Conference may be less than they would have liked. However, the tight Conference timetable, the large number of NGOs accredited to the Conference, and limited seating capacity, especially in the informal sessions, required NGOs to consolidate themselves into groups for the purposes of delivering statements and for participating in informal sessions. Nonetheless, despite these difficulties and limitations NGOs made substantial and important written contributions to the Conference on all articles in the Agreement. These contributions demonstrated the thorough and competent understanding NGOs have of global, regional, and local issues facing the conservation and management of straddling fish stocks and highly migratory fish stocks. However, only a few delegations including Canada, New Zealand and the United States, had NGO representatives. Nonetheless, a number of delegations consulted regularly with NGOs and these delegations were prepared to take NGO issues and positions forward in Conference debate.

The NGOs accredited to the Conference were extremely well organized, meeting intersessionally and daily during the sessions to discuss issues before the Conference, to develop common positions, to receive briefings from delegations and organizations participating in the Conference, and reciprocally, to provide briefings for the delegations and organizations on NGO positions and thinking. The daily reporting on Conference events in the *Earth Negotiations Bulletin*, and in other publications, was of considerable assistance to delegations, and in particular those delegates which were unable to participate in all sessions or attend all meetings of each session.

It was apparent from the NGO participation in the Conference that they are well briefed on current international fisheries issues and that they could call upon technical assessments and support of a very high order. Although some States in the past expressed reservations about the role being played by NGOs in international conferences of this type, there was a high level of professional respect for the technical contributions being made by NGOs in the Conference.

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[78] FAO. 1995. "The Role of Regional Fishery Organizations and Arrangements in Fisheries Management". Paper presented at the Twenty-first Session of the Committee on Fisheries. (mimeo). 17p.

8. CONCLUSION

Within its carefully negotiated mandate and the framework of the 1982 Convention the Conference negotiated, in a comprehensive manner, conservation and management arrangements for straddling fish stocks and highly migratory fish stocks. Despite marked differences in approach between the two principal groups in the Conference (i.e., coastal States and DWFNs), there was strong commitment by States to achieve transparent, long-term and internationally acceptable results. There was also a keen appreciation by States of the limited timeframe set by the UNGA within which results needed to achieved.

The work of the Conference was guided skilfully by the Chairman and the Bureau. The Chairman's dedication and determination to securing an internationally acceptable mechanism for the conservation and management of straddling fish stocks and highly migratory fish stocks underpinned the progress made during each session of the Conference and in the intersessional periods.

The significance of the Conference and its Agreement adopted by consensus on 4 August 1995 was not only that it affected an estimated 10 percent, or more, of the total world fish catches taken on the high seas. Rather the Agreement's significance is more fundamental in that it affects the inter-relatedness of fishing in zones of national jurisdiction and on the high seas when straddling fish stocks and highly migratory fish stocks are being targeted. International cooperation in respect of the exploitation of these stocks is essential so that conservation and management regimes adopted for the two jurisdictional areas (i.e., EEZs and the high seas) have a high degree of complementarity.

The Agreement adopted by the Conference is not entirely satisfactory for all States, IGOs and NGOs that participated in the Conference, but such is the nature of consensus decision making. For some States, IGOs and NGOs, the Agreement is seen as yielding too little, too late. For other States and industry groups the outcome goes further than they wanted. Nonetheless, it is recognized that if implemented effectively and fully, the conservation and management arrangements and mechanisms accepted by the Conference, and as contained in the Agreement, represent a significant step forward to achieving a greater degree of rationality in the exploitation of straddling fish stocks and highly migratory fish stocks, and of ensuring that these stocks are harvested in a sustainable manner, as called for in Chapter 17 of Agenda 21.

ANNEX 1

List of Abbreviations

1982 Convention:	1982 United Nations Convention on the Law of the Sea
ACC/SC	Administrative Committee on Coordination/Sub-Committee on Oceans and Coastal Areas
Ad hoc Consultation	FAO sponsored *Ad hoc* Consultation on the Role of Regional Fishery Agencies in Relation to High Seas Fishery Statistics
Agenda 21	Agenda 21: Programme of Action for Sustainable Development
CARICOM	Caribbean Community
Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
CPPS	Permanent South Pacific Commission
CSD	United Nations commission for Sustainable Development
DOALOS	Division for Ocean Affairs and the Law of the Sea, United Nations Office of Legal Affairs
DWFN	Distant-water fishing nation (or entity)
EEC/EC	European Community
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FFA	South Pacific Forum Fisheries Agency
IACSD	Inter-agency Committee on Sustainable Development
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IGO	Intergovernmental organization
IOC-Unesco	Intergovernmental Oceanographic Commission - United Nations Educational, Scientific and Cultural Organization
MCS	Monitoring, control and surveillance (of fisheries)
NGO	Non-governmental organization

OLDEPESCA	Latin American Organization for Fisheries Development
SPC	South Pacific Commission
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Conference on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
WWF	World Wide Fund for Nature

General Assembly

UNITED NATIONS

Distr.
GENERAL

A/CONF.164/38
7 September 1995

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
Sixth session
New York, 24 July-4 August 1995

FINAL ACT OF THE UNITED NATIONS CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

I. INTRODUCTION

1. The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened pursuant to paragraph 1 of General Assembly resolution 47/192 of 22 December 1992 in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development.

2. The United Nations Conference on Environment and Development, held at Rio de Janeiro from 3 to 14 June 1992, adopted Agenda 21, paragraph 17.49 of which reads as follows:

> "States should take effective action, including bilateral and multilateral cooperation, where appropriate at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of the United Nations Convention on the Law of the Sea. In particular, they should:
>
> "...
>
> "(e) Convene, as soon as possible, an intergovernmental conference under United Nations auspices, taking into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The conference, drawing, inter alia, on scientific and technical studies by FAO, should identify and assess existing problems related to the conservation and management of such fish stocks, and consider means ofimproving cooperation on fisheries among States, and formulate appropriate recommendations. The work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas." 1/

3. The General Assembly, in its resolution 47/192, recalled Agenda 21, in particular chapter 17, programme area C, relating to the sustainable use and conservation of marine living resources of the high seas, and decided that the Conference, in accordance with the mandate quoted above, should take into

account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks. The Assembly further decided that the Conference, drawing, inter alia, on scientific and technical studies by the Food and Agriculture Organization of the United Nations, should: (a) identify and assess existing problems related to the conservation and management of such fish stocks; (b) consider means of improving fisheries cooperation among States; and (c) formulate appropriate recommendations.

4. The General Assembly also reaffirmed that the work and results of the Conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas, and that States should give full effect to the high seas fisheries provisions of the Convention with regard to fisheries populations whose ranges lie both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks.

5. By the same resolution, the General Assembly invited relevant specialized agencies, particularly the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations and programmes of the United Nations system, as well as regional and subregional fisheries organizations, to contribute relevant scientific and technical studies and reports. It also invited relevant non-governmental organizations from developed and developing countries to contribute to the Conference within the areas of their competence and expertise.

II. SESSIONS OF THE CONFERENCE

6. Pursuant to General Assembly resolutions 47/192, 48/194 of 21 December 1993 and 49/121 of 19 December 1994, the following sessions of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks were held at United Nations Headquarters in New York: 2/

- First session: 19 to 23 April 1993;
- Second session: 12 to 30 July 1993;
- Third session: 14 to 31 March 1994;
- Fourth session: 15 to 26 August 1994;
- Fifth session: 27 March to 12 April 1995;
- Sixth session: 24 July to 4 August 1995. 3/

III. PARTICIPATION IN THE CONFERENCE

7. Pursuant to paragraph 4 of General Assembly resolution 47/192, the following were invited to the Conference:

(a) States Members of the United Nations or members of the specialized agencies and the International Atomic Energy Agency;

(b) Representatives of organizations that have received a standing invitation from the General Assembly to participate, in the capacity of observers, in the sessions and work of all international conferences convened under its auspices;

(c) Associate members of regional commissions;

(d) Representatives of the national liberation movements recognized by the Organization of African Unity in its region;

(e) Specialized agencies and the International Atomic Energy Agency, as well as other organs, organizations and programmes of the United Nations system;

(f) Relevant intergovernmental organizations that had been invited to participate in the work of the Preparatory Committee for the United Nations Conference on Environment and Development;

(g) Regional and subregional fisheries organizations;

(h) Relevant non-governmental organizations.

8. The representatives of the following States participated in the sessions of the Conference: Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Kazakstan, Kenya, Kiribati, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Pakistan, Palau, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Zambia and Zimbabwe.

9. The representative of the European Community 4/ participated in the sessions without the right to vote.

10. The following associate members of a regional commission were represented as observers at the sessions: Montserrat and United States Virgin Islands.

11. The following national liberation movement was represented as observer at the first session: Pan Africanist Congress of Azania.

12. The following specialized agencies were represented as observers at the sessions: Food and Agriculture Organization of the United Nations (FAO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and World Bank.

13. The Intergovernmental Oceanographic Commission (IOC) of UNESCO, the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) were also present as observers at the sessions.

14. The following intergovernmental organizations were represented as observers at the sessions: Asian-African Legal Consultative Committee, Commission on the Indian Ocean, Inter-American Tropical Tuna Commission, International Commission for the Conservation of Atlantic Tunas, International Council for the Exploration of the Sea, International Maritime Satellite Organization, International Whaling Commission, Latin American Organization for the Development of Fisheries, Ministerial Conference on Fisheries Cooperation among African States bordering the Atlantic Ocean, North Atlantic Salmon Conservation Organization, Northwest Atlantic Fisheries Organization, Organization of African Unity, Organisation for Economic Cooperation and Development, South Pacific Commission, South Pacific Permanent Commission and South Pacific Forum Fisheries Agency.

15. The following non-governmental organizations were represented as observers at the sessions: Alaska Marine Conservation Council, Alaska Public Interest Research Group, American Oceans Campaign, American Society of International Law, Association Algérienne pour la Protection de la Nature et de l'Environnement, Association Tunisienne pour la Protection de la Nature et de l'Environnement, Association of the Bar of the City of New York, Atlantic Salmon Federation, Bering Sea Fisherman's Association, Both Ends, Canadian Oceans Caucus, Center for Development of International Law, Center for Marine Conservation, Centre de Recherches pour le Développement des Technologies Intermédiares de Pêche, Comité Catholique Contre la Faim et pour le Développement, Confederación de Trabajadores Portuarios, Gente de Mar y Pesqueros de Chile, Confederación Nacional de Pescadores Artesanales de Chile, Coordinadora de Tripulantes Pesqueros Industriales del Cono Sur de América Latina, Council on Ocean Law, Earth Council, Earth Island Institute, Earthtrust, Environmental Defense Fund, Federación Nacional de Cooperativas Pesqueras del Ecuador, Federation of Japan Tuna Fisheries Cooperative Associations, Fish, Food and Allied Workers, Fisheries Council of Canada, Four Directions Council, Friends of the Earth International, Friends World Committee for Consultations (Quaker United Nations Office), Fundación Hernandiana, Global Education Associates, Greenpeace International, Groupement d'Intérêt Économique, International Coalition of Fisheries Associations, International Coastal and Ocean Organization, International Collective in Support of Fishworkers, International Confederation of Free Trade Unions, International Institute for Sustainable Development, International Law Association, International Ocean Institute, International Union for the Conservation of Nature and Natural Resources (IUCN), Japan Fisheries Association, Kandune Self Help Water Project, Marine Environmental Research Institute, Namibian Food and Allied Workers Union, National Audubon Society, National Wildlife Federation, Nationwide Coalition of Fisherfolks for Aquatic Reform, Natural Resources Defense Council, Netherlands National Committee for IUCN, Newfoundland and Labrador Environmental Association, Newfoundland Inshore Fisheries Association, Oceans Institute of Canada, Ocean Trust, Overseas Fishery Cooperation Foundation, Pamalakaya (National United Movement of Fisherfolk - Philippines), Red Mexicana de Acción frente al Libre Comercio, Réserve Internationale Maritime en Mediterranée Occidentale, Samoan Association of Non-governmental Organizations, Sindicato de Obreros Marítimos Unidos, SONAR (Save Our Northwest Atlantic Resources), Trickle Up Program, United Nations Association in Canada, United Nations Association-United Kingdom, United Nations Environment and Development-United Kingdom Committee, Wildlife Conservation Society, Women and Fisheries Network, World Wide Fund for Nature, World Wide Fund Suisse.

16. Pursuant to paragraph 9 of General Assembly resolution 47/192, a voluntary fund was established in the Secretariat for the purpose of assisting developing countries, especially those most concerned by the subject-matter of the Conference, in particular the least developed among them, to participate in the Conference. Contributions to the Fund were made by the Governments of Canada, Japan, Norway and the Republic of Korea.

IV. OFFICERS AND COMMITTEES

17. At its first meeting, the Conference elected Mr. Satya N. Nandan (Fiji) as its Chairman.

18. The Conference also elected as Vice-Chairmen the representatives of the following States: Chile, Italy and Mauritania.

19. The Conference appointed the representatives of the following States as members of the Credentials Committee: Antigua and Barbuda, Argentina, Burundi, China, Kenya, New Zealand, Papua New Guinea, Russian Federation and United States of America. At its first meeting, on 28 July 1993, the Credentials Committee elected Mr. Alberto Luis Daverede (Argentina) as its Chairman.

20. At the first and second sessions, Mr. Carl-August Fleischhauer, Under-Secretary-General for Legal Affairs, the Legal Counsel, and thereafter Mr. Hans Corell, served as Secretary-General of the Conference,

representing the Secretary-General of the United Nations. For the first four sessions, Mr. Dolliver L. Nelson, and thereafter Mr. Moritaka Hayashi, served as Secretary of the Conference.

21. In accordance with paragraph 11 of General Assembly resolution 47/192, the Food and Agriculture Organization of the United Nations provided an officer, Mr. David J. Doulman, to serve as Scientific and Technical Adviser to the Conference.

V. DOCUMENTATION OF THE CONFERENCE

22. The Conference documentation 5/ included, inter alia, the following:

(a) Rules of procedure; 6/

(b) Proposals and other communications submitted by delegations; 7/

(c) Reports and studies submitted by the Secretariat, FAO and IOC; 8/

(d) Reports and comments submitted by intergovernmental organizations, regional and subregional fisheries organizations and arrangements; 9/

(e) Statements by the Chairman of the Conference; 10/

(f) A guide to the issues before the Conference, the negotiating texts and the draft agreement prepared by the Chairman of the Conference. 11/

VI. WORK OF THE CONFERENCE

23. The Conference adopted its agenda (A/CONF.164/5) and rules of procedure (A/CONF.164/6) at its first session.

24. At the second session, the Conference devoted the first three days to general debate, following which the Chairman outlined the key issues on which there was general agreement. 12/

25. At the same session, the Conference proceeded to examine the issues relating to straddling fish stocks and highly migratory fish stocks as contained in the document entitled "A guide to the issues before the Conference prepared by the Chairman" (A/CONF.164/10).

26. At the end of the second session, the Chairman prepared a negotiating text (A/CONF.164/13), which the Conference considered at the third session.

27. Also at the third session, the Conference established two open-ended working groups to consider the information papers, prepared by FAO at the request of the Conference, on the precautionary approach to fisheries management and on management reference points. Mr. Andrés Couve (Chile) and Mr. Andrew Rosenberg (United States of America) served as chairmen of the working groups. The results of the work of the two working groups are contained in documents A/CONF.164/WP.1 and WP.2. At the end of the third session, the Chairman submitted a revision of his negotiating text (A/CONF.164/13/Rev.1), which reflected the work of the Working Groups.

28. At the fourth session, the Chairman prepared a new revision of his negotiating text in the form of a binding instrument, entitled "Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of

Straddling Fish Stocks and Highly Migratory Fish Stocks" (A/CONF.164/22). At the end of the fifth session, the Chairman prepared a revised text of the Draft Agreement (A/CONF.164/22/Rev.1).

29. At the sixth session, the Conference considered the revised text of the Draft Agreement (A/CONF.164/22/Rev.1), as well as suggested drafting changes and editorial improvements (A/CONF.164/CRP.7). Following the deliberations of the Conference, the Chairman proposed for adoption a "Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks" (A/CONF.164/33).

30. On 4 August 1995, the Conference adopted without a vote the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, as well as resolutions I and II (A/CONF.164/32, annex). The two resolutions are annexed to this Final Act. In doing so, the Conference discharged the mandate given to it by the General Assembly in its resolution 47/192.

31. The Conference decided to resume its sixth session on 4 December 1995 for a ceremony of signature of the Agreement and this Final Act. The Conference requested the Secretariat to prepare the final text of the Agreement, incorporating necessary editing and drafting changes and ensuring concordance among the six language versions. 13/

IN WITNESS WHEREOF the undersigned have signed this Final Act.

DONE AT UNITED NATIONS HEADQUARTERS in New York this fourth day of December, one thousand nine hundred ninety-five, in a single copy in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited in the archives of the United Nations Secretariat.

The Chairman of the Conference:

Satya N. NANDAN

The Under-Secretary-General for Legal Affairs, The Legal Counsel:

Hans CORELL

The Secretary of the Conference:

Moritaka HAYASHI

Notes

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.96.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II, paragraph 17.49.

2/ Reports on each of the sessions are contained in A/CONF.164/9 (first (organizational) session), A/CONF.164/16 and Corr.1 (second session), A/CONF.164/20 (third session), A/CONF.164/25 (fourth session), A/CONF.164/29 (fifth session) and A/CONF/164/36 (sixth session).

3/ See paragraph 31 below.

4/ Rule 2 of the rules of procedure of the Conference (A/CONF.164/6) provides that:

"The representative of the European Economic Community shall participate in the Conference in matters within its competence without the right to vote. Such representation shall in no case entail an increase of the representation to which the States members of the European Economic Community would otherwise be entitled."

In adopting the above rule the Conference recorded the following understanding:

"This rule is agreed upon in view of the fact that, with regard to the conservation and management of the sea fishing resources, States members of the European Economic Community have transferred competence to the Community, and in no way does it constitute a precedent for other United Nations forums where a similar transfer of competence does not occur. (See Declaration of the European Economic Community upon signing the United Nations Convention on the Law of the Sea. Multilateral treaties deposited with the Secretary-General (ST/LEG/SER.E/10, p. 801).)" (A/CONF.164/6, note 1)

The Secretariat was informed during the third session of the Conference that the European Economic Community had changed its name to the European Community.

5/ For a complete listing of the Conference documentation, see A/CONF.164/INF/16.

6/ A/CONF.164/6.

7/ A/CONF.164/L.1-L.50.

8/ Report of the technical consultation on high seas fishing and the papers presented at the technical consultation on high seas fishing (FAO) (A/CONF.164/INF/2); information on activities of the Intergovernmental Oceanographic Commission relevant to the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.164/INF/3); some high seas fisheries aspects relating to straddling fish stocks and highly migratory fish stocks (FAO) (A/CONF.164/INF/4 and Corr.1); background paper prepared by the Secretariat (A/CONF.164/INF/5); the precautionary approach to fisheries with reference to straddling fish stocks and highly migratory fish stocks (FAO) (A/CONF.164/INF/8); and

reference points for fisheries management - their potential application to straddling and highly migratory resources (FAO) (A/CONF.164/INF/9).

9/ Report of the first session of the International Conference on the Conservation and Management of the Marine Living Resources in the High Seas of the Okhotsk Sea (submitted by the delegation of the Russian Federation) (A/CONF.164/INF/6); *Ad hoc* consultation on the role of regional fishery agencies in relation to high-seas fishing statistics (A/CONF.164/INF/10); comments by the Coordinating Working Party on Fishery Statistics on annex I to the Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.164/INF/13).

10/ A/CONF.164/7, 8, 11, 12, 15, 17, 19, 21, 24, 26, 28, 30 and 35.

11/ A guide to the issues before the Conference (A/CONF.164/10); Negotiating text (A/CONF.164/13); Revised negotiating text (A/CONF.164/13/Rev.1); Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (A/CONF.164/22); revised Draft Agreement (A/CONF.164/22/Rev.1); and Draft Agreement (A/CONF.164/33).

12/ See A/48/479, para. 10.

13/ The final text of the Agreement will be issued as document A/CONF.164/37.

ANNEX

Resolution I

Early and effective implementation of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks,

Having adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Underlining the importance of early and effective implementation of the Agreement,

Recognizing, therefore, the need to provide for the provisional application of the Agreement,

Emphasizing the importance of rapid entry into force of the Agreement and early achievement of universal participation,

1. Requests the Secretary-General of the United Nations to open the Agreement for signature in New York on 4 December 1995;

2. Urges all States and other entities referred to in article 1, paragraph 2 (b), of the Agreement to sign it on 4 December 1995 or at the earliest subsequent opportunity and thereafter to ratify, or accede to it;

3. Calls upon States and other entities referred to in paragraph 2 of the present resolution to apply the Agreement provisionally.

Resolution II

Reports on developments by the Secretary-General of the United Nations

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks,

Having adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

Recognizing the importance of periodic consideration and review of developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks,

Recalling General Assembly resolution 49/28 of 6 December 1994, in which the Assembly underlined the importance of consideration and review of the overall developments relating to the law of the sea by the Assembly, as the global institution having the competence to undertake such a review,

Recalling also the responsibility of the Secretary-General under the United Nations Convention on the Law of the Sea to report on developments pertaining to the implementation of the Convention,

Recognizing the importance of exchange of information among States, and relevant intergovernmental and non-governmental organizations concerning the implementation of the Agreement,

1. Recommends to the General Assembly that it review developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, on the basis of a report to be submitted by the Secretary-General at the second session following the adoption of the Agreement and biennially thereafter;

2. Requests the Secretary-General of the United Nations, in preparing such report, to take into account information provided by States, the Food and Agriculture Organization of the United Nations and its fisheries bodies and subregional and regional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and relevant non-governmental organizations;

3. Also requests the Secretary-General to cooperate with the Food and Agriculture Organization of the United Nations in order to ensure that reporting on all major fisheries instruments and activities is coordinated and the required scientific and technical analysis standardized to minimize duplication and to reduce the reporting burden for national administrations.

ANNEX 3

UNITED NATIONS

General Assembly

Distr.
GENERAL

A/CONF.164/37
8 September 1995

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
Sixth session
New York, 24 July-4 August 1995

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

Seeking to address in particular the problems identified in chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are overutilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Use of terms and scope

1. For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "conservation and management measures" means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

(c) "fish" includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

(d) "arrangement" means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.

(b) This Agreement applies mutatis mutandis

(i) to any entity referred to in article 305, paragraph 1 (c), (d) and (e), of the Convention and

(ii) subject to article 47, to any entity referred to as an "international organization" in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent "States Parties" refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.

Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3

Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis in respect of areas under national jurisdiction.

Article 4

Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II

CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5

General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and

taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account, inter alia, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(d) develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3 (b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, inter alia, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8

Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

Article 9

Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

Article 10

Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;

(e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;

(f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;

(h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;

(j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;

(k) promote the peaceful settlement of disputes in accordance with Part VIII;

(l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and

(m) give due publicity to the conservation and management measures established by the organization or arrangement.

Article 11

New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

(a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;

(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;

(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12

Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.

2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

Article 13

Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15

Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16

Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of

such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

Article 18

Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

(b) establishment of regulations:

(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;

(iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and

(iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;

(c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

(i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

Article 20

International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

Article 21

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch

on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3 (a);

(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies mutatis mutandis to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

Article 22

Basic procedures for boarding and inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized inspectors:

(a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;

(b) initiate notice to the flag State at the time of the boarding and inspection;

(c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;

(d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;

(e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and

(f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

(a) accept and facilitate prompt and safe boarding by the inspectors;

(b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

(c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;

(d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;

(e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and

(f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23

Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII

REQUIREMENTS OF DEVELOPING STATES

Article 24

Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25

Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26

Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27

Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29

Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30

Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31

Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32

Limitations on applicability of procedures for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

PART XI

RESPONSIBILITY AND LIABILITY

Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37

Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38

Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.

2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43

Declarations and statements

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44

Relation to other agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45

Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Article 46

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the

validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47

Participation by international organizations

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) article 2, first sentence; and

(b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48

Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

ANNEX I

STANDARD REQUIREMENTS FOR THE COLLECTION AND SHARING OF DATA

Article 1

General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

Article 2

Principles of data collection, compilation and exchange

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

(d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

Article 3

Basic fishery data

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

(a) time series of catch and effort statistics by fishery and fleet;

(b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];

(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

(a) composition of the catch according to length, weight and sex;

(b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Article 4

Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) vessel identification, flag and port of registry;

(b) vessel type;

(c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and

(d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

(a) navigation and position fixing aids;

(b) communication equipment and international radio call sign; and

(c) crew size.

Article 5

Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

Article 6

Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

(a) position verification through vessel monitoring systems;

(b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;

(c) vessel trip, landing and transshipment reports; and

(d) port sampling.

Article 7

Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

ANNEX II

GUIDELINES FOR THE APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

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